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We would really like to know if you find our manuals useful. Please let us know via this "feedback" page. Thank you for taking the time to provide your comments

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## **1000 INTRODUCTION**

The General Tax Audit Manual (GTAM) contains procedures and guidelines for completing general tax audits. Refer to this manual when auditing cases. However, it does not cover all possible audit situations.

Statements of law made in the GTAM reflect the law on the manual's revision date. Send suggested updates to the GTAM to \* \* \* \* \* \* \*, GTA Technical Resource Section,\* \* \* \* \* \* \*.

GTAM 1050	COMMONLY USED ACRONYMS
GTAM 1100	TAXPAYER BILL OF RIGHTS
GTAM 1200	MISSION OF THE FRANCHISE TAX BOARD
GTAM 1300	STATEMENT OF PRINCIPLES OF TAX ADMINISTRATION
GTAM 1400	AMERICANS WITH DISABILITIES ACT - REQUESTS FOR
	ALTERNATIVE FORMATS

**NOTE:** ((\* \* \*)) = Indicates confidential and/or proprietary information that has been deleted.

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## 1050 COMMONLY USED ACRONYMS

These acronyms are used extensively throughout the General Tax Audit Manual:

BETS	Business Entity Tax System
CR&TC	California Revenue and Taxation Code
FTB	Franchise Tax Board
GTA	General Tax Audit
GTAM	General Tax Audit Manual
IMF	Individual Master File
IRC	Internal Revenue Code
IRS	Internal Revenue Service
NPA	Notice of Proposed Assessment
PASS	Professional Audit Support System
PIT	Personal Income Tax
RAR	Revenue Agent's Report
SBE	State Board of Equalization
TI	Taxpayer Information

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#### 1100 TAXPAYER BILL OF RIGHTS

See the California Taxpayers' Bill of Rights, A Comprehensive Guide (REV. 4-98). (Form FTB 4058C)

You can find this form on our website at:

\*

For more information, refer to the income tax law code sections. Most of the Taxpayers' Bill of Rights provisions are in CR&TC sections 21001–21027.

**NOTE:** ((\* \* \*)) = Indicates confidential and/or proprietary information that has been deleted.

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## 1200 MISSION OF THE FRANCHISE TAX BOARD

See our Mission statement at:

http://www.ftb.ca.gov/geninfo/ftb1.html#mission

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#### 1300 STATEMENT OF PRINCIPLES OF TAX ADMINISTRATION

See the Statement of Principles of Tax Administration at:

http://www.ftb.ca.gov/aboutftb/index.html - principles

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# 1400 AMERICANS WITH DISABILITIES ACT - REQUESTS FOR ALTERNATIVE FORMATS

To comply with the Americans with Disabilities Act, we must send the following forms with initial contact letters:

#### **Fed/State Examination Section**

Audit, Contact, and Privacy Notices (Form FTB 1015C)

## **Residency Program**

Frequently Asked Questions about your Residency Audit (Form FTB 1015R)

#### **All Other Sections**

Frequently Asked Questions About your Tax Audit (Form FTB 1015B)

If a request is made for tax forms or other material in other formats, such as Braille, audiocassette, or large print; then contact the *Audit Tech/Support Bureau* at \* \* \* \* \* \* \*. The Audit Tech/Support Bureau requests tax forms from the Tax Forms Development & Distribution Section. They will request the tax form(s) or other material(s) from vendors. These requests should arrive in two to three weeks.

**NOTE**: If a taxpayer contacts you through the *California Relay Service* or *TTY/TDD* to respond to an initial letter, you should first verify the taxpayer's identity by asking for:

- Taxpayer name and address;
- Taxpayer identification number (usually Social Security Number);
- Tax years in question; and
- Initial letter mail date.

**NOTE:** ((\* \* \*)) = Indicates confidential and/or proprietary information that has been deleted.

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## 2000 AUDIT OBJECTIVES

The audit goals that support our mission, as outlined in our strategic plan, are to:

- Become customer-centered.
- Promote fair and effective tax administration.
- Build a strong organization.
- Deliver efficient and high quality business results.
- Protect taxpayer privacy and ensure security of taxpayer information.

GTAM 2100 AUDIT STANDARDS
GTAM 2210 CUSTOMER SERVICE
GTAM 2220 TAXPAYER BILL OF RIGHTS TIMEFRAMES

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#### 2100 AUDIT STANDARDS

We want to consistently provide high quality services to taxpayers. You are expected to correctly apply and administer the tax laws in a reasonable, practical, fair, and impartial manner. Conduct audits within the bounds of the law, with sound administration, minimal delay, courtesy, and respect to taxpayers. Also, conduct audits in a manner that is the least burdensome, costly, or intrusive to taxpayers.

The audit process identifies issues; gathers, evaluates, and documents information; and determines the correct tax liability, supported by reasonable interpretation of the tax laws. Use the following audit standards in completing audits, called "LOTS":

- LEGALITY Ensure audit activities and conclusions agree with established laws and legal interpretations.
- OBJECTIVITY Examine all relevant, available facts fairly and without bias.
- TIMELINESS Conduct and complete audits with a minimum of inconvenience to taxpayers.
- SUPPORTABILITY Adequately support recommendations with facts and law.

# **Audit Expectations**

You should effectively manage your inventory, plan your work, consider the materiality of issues, and conduct examinations without intruding on taxpayers' time unnecessarily. Here are some guidelines:

- Avoid opening new audits with fewer than 6-12 months before the statute of limitations expires.
- Make information requests timely, reasonable, and material. Consider practicality, costs, and alternative acceptable documentation.
- Use online resources (Lexis/Nexis, RIA, CCH, etc.) to get information, instead of asking the taxpayer for it.
- Ensure taxpayers understand why the requested documents are necessary for the audit.
- Avoid rework by preparing timely, organized, and clear workpapers.

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- Follow up with taxpayers within 30 days of last contact. Meet any established timeframes.
- Establish a positive relationship with taxpayers to help complete the audit effectively and on time.
- Confirm the facts and tax law applications support the final audit recommendations.
- Ensure taxpayers receive a written summary of the final audit recommendations and the status of their audit.
- Complete audits within one year.

**NOTE:** ((\* \* \*)) = Indicates confidential and/or proprietary information that has been deleted.

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## 2210 CUSTOMER SERVICE

In the high quality audit environment, we *listen, recognize and respect a customer's* needs, and provide timely assistance. Our Statement of Principles of Tax Administration clearly values high quality customer service.

We emphasize customer service while ensuring compliance. To ensure quality customer service, the Audit Division stresses the following goals:

- Value Customer Service -- Be aware of customer service and its application during audit activities.
- **Be Efficient** Audit tax year(s) that are more current, shorten audit time, and produce quality audits.
- Follow Up and Meet Deadlines Always respond timely to letters, phone calls, etc.
- Minimize Intrusiveness Use all available resources to minimize information requests. Be flexible by accepting alternative documents when possible. Apply the law consistently and clearly. Emphasize education and compliance to measure benefits and efficiencies.
- Value and Apply Professionalism in the Workplace Value communication. Respect individuality and ideas. Provide equal opportunities to staff. Continue developing and training staff.

It is critical to establish a positive relationship with the taxpayer or representative to ensure completion of the audit effectively and on time. To encourage positive working relationships, use the audit standards of *Legality*, *Objectivity*, *Timeliness*, and *Supportability* (see GTAM 2100).

When interacting with the taxpayer or representative, ensure that:

- The taxpayer understands the audit's purpose and our legitimate need for the information we request. Discuss alternative information sources that could satisfy our needs (for example, a purchase contract instead of cancelled checks to substantiate basis).
- You evaluate audit data and determine the result in a timely, fair and impartial manner.
- The audit presents as little inconvenience to the taxpayer as possible. This
  includes obtaining information from third party sources whenever possible
  (see GTAM 9210, Third Party Contacts). Always research other sources

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for audit information before sending an Information Request or Document Request.

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- Both facts and law support the final audit recommendations.
- We inform the taxpayer of the final audit recommendations.

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#### 2220 TAXPAYER BILL OF RIGHTS TIMEFRAMES

The California Taxpayer Bill of Rights (TPBOR, see GTAM 1100) gives the time guidelines for processing Claims for Refund and Protests.

The TPBOR time in the chart below refers to the time between the date we stamp it "received" and the date of Notice of Action. These guidelines are not the same as the date that the Statute of Limitations expires. They are guidelines set by Audit to ensure timely processing of these items.

CATEGORY	TPBOR TIME
Claims for Refund	000
PIT Claims without Audit Involvement	2 Months
PIT Desk Audit Claims	10 Months
PIT Field Audit Claims	18 Months
Corp. Claims without Audit Involvement	3 Months
Corp. Desk Audit Claims	12 Months
Apportioning Field Claims	27 Months
Nonapportioning Field Claims	18 Months
PIT Clerical Audit Protests	6 Months
PIT Desk Audits	10 Months
PIT Field or Hearing Protests	18 Months
Corporation Desk Audit	10 Months
Nonapportioning Field and Hearing Protests	18 Months
Undocketed Apportioning Field and Hearing Protests	30 Months
Docketed Apportioning Protests	38 Months

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## 3000 CONFIDENTIALITY AND DISCLOSURE

Provisions prohibiting the disclosure of confidential information help us administer the income tax laws by encouraging taxpayers to make full and truthful information disclosure, without fearing that we will give the information to other parties or use it against them.

You must keep this data confidential. Failing to do so could subject you to disciplinary proceedings, loss of employment, and criminal penalties.

* * * * * * * * * * * *	* * * * * * * * * * * * * * *	* * *	

GTAM 3100	CONFIDENTIAL INFORMATION DEFINED
GTAM 3110	NEED TO KNOW / RIGHT TO KNOW
GTAM 3200	UNAUTHORIZED DISCLOSURE OF STATE INFORMATION
GTAM 3300	AUTHORIZED DISCLOSURE OF INFORMATION
GTAM 3320	DISCLOSURE GUIDELINES – CORPORATIONS

NOTE: ((\* \* \*)) = Indicates confidential and/or proprietary information that has been deleted.

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#### 3100 CONFIDENTIAL INFORMATION DEFINED

Confidential information is defined as any item of information that is:

- Submitted to, or developed within, our organization to administer its program responsibilities, and
- Is not specifically made public information by statute.

Confidential information generally includes federal and state tax return information. We do not have authority to use these records and information for any purpose not specified by law.

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## 3110 NEED TO KNOW / RIGHT TO KNOW

"Need to know" is the need to see information in order to perform official responsibilities. Always question the "need to know" if an employee's information request is unusual.

"Right to know" is the right to get information because of statute, court order, or decisional law. Individuals also have the right to submit evidence to correct and complete records.

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#### 3200 UNAUTHORIZED DISCLOSURE OF STATE INFORMATION

Under CR&TC section 19542, any unwarranted disclosure or use of tax return information, or any willful unauthorized inspection of tax return information, is punishable as a misdemeanor. "Inspection" is defined to mean any examination of confidential information.

The FTB must notify the affected taxpayer of the unwarranted disclosure or use of a tax return, or any unauthorized inspection of a tax return, if certain criminal charges are filed for the offense. We must also notify the affected taxpayer when unauthorized persons acquire their computerized personal information. The consequences of violating these rules can be severe, including dismissal, criminal prosecution, and being personally sued by the taxpayer.

The taxpayer notification provisions are the same for federal and state. State employees are subject to the federal law provisions regarding unwarranted disclosure or use of federal tax information, or any willful unauthorized inspection of federal tax information we receive from the Internal Revenue Service. Clearly identify the source whenever any file contains information we have obtained outside our offices.

GTAM 3210	UNAX - Taxpayer Browsing Protection Act
GTAM 3220	Internet Mail
GTAM 3230	Outlook Email to Request Returns or Audit Files
GTAM 3240	Traveling With Confidential Taxpayer Information

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# 3210 UNAX - Taxpayer Browsing Protection Act

The Taxpayer Browsing Protection Act makes unauthorized inspection (or browsing) of federal taxpayer information a felony. The penalty for unauthorized browsing is, "...a fine in an amount not exceeding \$5,000, or imprisonment of not more than five years, or both, together with the costs of prosecution." The provisions extend the prohibition to state employees with access to federal information.

Effective January 1, 1999, CR&TC section 19542.1 made punishable as a misdemeanor:

- Unwarranted disclosure or use of tax return information.
- Willful unauthorized inspection of tax return information.

We must notify the affected taxpayer of the unwarranted disclosure if certain criminal charges are filed for the offense.

"Inspection" means any examination of confidential information. IRC section 7431 and 6103 have comparable provisions, but these offenses are punishable as a misdemeanor or a felony.

UNAX requires concealment of all confidential taxpayer data (including Revenue Agent Reports, 6227 requests) at all times, from everyone, except those working on the case.

- Do <u>not</u> place these documents in in-baskets or leave them on desks unless covered or turned over.
- Cover or turn over all confidential information when another person enters your workstation.
- Turn over, cover, or put away taxpayer documents if you leave your desk.
- Place all confidential data in drawers, boxes, or shelving that conceals taxpayer identity when you leave the office.

The law says to view taxpayer data where you have no need to know is unauthorized disclosure.

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#### 3220 Internet Mail

Do not exchange confidential information with a taxpayer or representative by Internet email under any circumstances. We cannot ensure the security and confidentiality of the information, because Internet email is processed through private service providers and transmitted through unsecured lines. Do not use Internet email during an audit even if the taxpayer offers to waive all rights to confidentiality.

You may review the data if a taxpayer or representative sends confidential information via Internet email. However, if the taxpayer or representative requests receipt of emailed correspondence, do not acknowledge receipt via email. Call the taxpayer or representative to acknowledge receipt of emailed correspondence.

Do not confirm an audit appointment via Internet email, even if requested by a taxpayer or representative. You risk making an unauthorized disclosure because email is transmitted through unsecured lines.

#### SUMMARY

- Do not exchange confidential information with a taxpayer or representative by Internet email under any circumstance.
- Do not use the Internet unless you are an authorized employee who
  has completed the Internet Service Application (Form FTB 6614) and
  attended Internet training.
- Do not use the Internet through standalone PASS laptops (laptops not connected to the PASS network).
- Do not use the Internet through Franchise Tax Board owned equipment using your personal account at any time.

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# 3230 Outlook Email to Request Returns or Audit Files

If you need to request tax returns or the audit file, see GTAM 4410.

Use Outlook email to request assistance in locating tax returns or the audit file ONLY if DSSS <u>cannot</u> locate the requested information. However, you must **limit** your search to areas where there is a reasonable probability for finding the returns or audit file.

For example, if you are in the S Corporation program and you need a shareholder tax return, first send an email notice to "S Corp Audit Staff and PIT Auditors." If unsuccessful, extend your search to include other GTA Program email addresses. Do not send an email to "All Audit Users". "All Audit Users" includes the entire branch (i.e., ABTS, MSA and GTA). Use discretion when choosing email addresses.

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# 3240 Traveling With Confidential Taxpayer Information

Many auditors carry-on or check-in audit bags at airports. These may contain tax returns and audit workpapers. Currently, 100% of checked and carry-on baggage is screened at commercial airports throughout the United States. The screening process may be done at a location away from you. NOTE: Airport security procedures are subject to change depending on the National Security Alert level.

Transportation Security Administration (TSA) guidelines for checking baggage at airports say to leave checked baggage unlocked. This raises a concern because audit bags may include taxpayer confidential information.

If you are traveling through airports with confidential tax information:

- Cover the face of all returns and workpapers with a piece of blank paper or cardboard so that the name and other confidential taxpayer information are not readily visible during security checks.
- Spread out your books and documents in your audit bags. This may reduce Otherwise, the likelihood that TSA will examine your bag. may believe your bag contains bombs or explosives.

If checked baggage is screened during the check-in process:

- Keep your audit bags unlocked during the physical screening process.
- Secure or lock the audit bag upon completion of the physical screening process.

If your checked bag is not screened during the check-in process:

- Keep the audit bag unlocked. Otherwise, the screener will break the lock.
- If your baggage is opened, the screeners will secure it with a tamper evident seal and place a notice in your bag alerting you that they opened your bag for inspection.

If you believe there was an unauthorized disclosure as a result of the screening process, contact your supervisor or the Disclosure Unit immediately.

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#### 3300 AUTHORIZED DISCLOSURE OF INFORMATION

We disclose non-proprietary information after completing the audit investigation. This practice generally conforms to the provisions of the Information Practices Act, which mandates disclosing information to individual taxpayers (California Civil Code section 1798.30-1798.44). We assert that the audit investigation is not complete until the review process is complete.

Taxpayers and their authorized representatives can receive copies of their audit files once the audit review process is completed. Sometimes, we issue Notices of Proposed Assessment before the review to protect the statute of limitations. Still, we will not disclose the audit file to the taxpayer until the Review process is complete. We charge \$.10 per page for copies of completed audit files.

The "audit file" includes:

- The Narrative Report.
- The Event Log.
- All workpapers, and supporting material.

In general, taxpayers may not see any document, or portion of a document, that discloses:

- Proprietary systems information (e.g., PFK indicators and system access codes).
- Other proprietary information.
- Audit selection standards.
- Information from or about informants.

(See GTAM 3320, *Disclosure Guidelines – Corporations*; and see GTAM 3340, *Disclosure Guidelines – Partnerships*, for specific business entity disclosure information)

The *IRS/FTB Exchange of Information Agreement* prohibits disclosing information from the IRS to anyone other than the taxpayer or authorized representative. We cannot provide other states with copies of information we receive from the IRS.

We may disclose information from or about a taxpayer's affiliate to the taxpayer or authorized representative if it is relevant to determining the taxpayer's franchise/income tax liability (see GTAM 3310, *Judicial or Administrative Tax Proceedings*).

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If the Protest Unit handled the case, taxpayers and authorized representatives may obtain copies of the protest file. In general, we must disclose the protest hearing officer's reports and all workpapers and supporting material.

Fully explain the above guidelines if taxpayers request copies of their audit files before the case has passed review.

<u>Remember</u>: before disclosing any information, *contact the Disclosure Unit* for approval.

GTAM 3310 Judicial or Administrative Tax Proceedings

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# 3310 Judicial or Administrative Tax Proceedings

We may disclose return or return information in a judicial or administrative proceeding pertaining to tax administration, if certain criteria apply (CR&TC section 19545). Administrative proceedings include audits, protest hearings, and collection actions. We may disclose information to taxpayers if:

- The proceeding relates to determining or collecting their tax liability.
- The treatment of an item on the return directly relates to resolving an issue in the proceeding.
- The information directly relates to a transactional relationship between them and a person who is a party to the proceeding, and directly affects how an issue will be resolved.

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#### 3320 DISCLOSURE GUIDELINES - CORPORATIONS

The Corporation Tax Law is quite specific about disclosure of business activities information for corporate taxpayers.

We can disclose (CR&TC section 19543):

- Corporate title.
- Corporate number.
- Date of commencement of business in this state.
- Taxable year adopted.
- Filing date of return.
- Name, date, and title of individuals signing affidavit to return.
- Due date of taxes.
- Total amount unpaid. The amount may be broken down to an annual basis.
- Entity address.
- Private address of officers and directors, if that information is on the tax return or the Secretary of State file.

Corporate taxpayers and their authorized representatives may obtain copies of their audit files once the GTA Technical Resource Unit completes its review. We disclose non-proprietary information to corporate taxpayers when the audit investigation is complete before the discovery process in Superior Court litigation, although no statute requires it. This practice generally conforms to the provisions of the Information Practices Act, which mandates disclosing information to individual taxpayers (California Civil Code section 1798.30-1798.44). The department asserts the audit investigation is not complete until the review process is complete.

The "audit file" includes:

- Narrative Report.
- Event Log.
- All workpapers, and supporting material.

Corporate taxpayers may not see any document, or portion of a document, such as:

- Our analysis of the strengths and weaknesses of the proposed assessment.
- Proprietary systems information.

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- Other proprietary information.
- Audit selection standards.
- Information from or about informants.

Before releasing any of the above information, contact the Disclosure Unit for approval.

GTAM 3321	Corporations – Shareholder Access to Records
GTAM 3322	Information on Individual Shareholder Returns
GTAM 3323	Group Return of Nonresident Shareholders

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# 3321 Corporations – Shareholder Access to Records

The shareholder's access to information depends upon whether the shareholder is an officer or director of the corporation. *The shareholder's stock ownership percentage is not a factor* in determining what you can release to the shareholder.

#### Officer/Director

A shareholder who is an officer or director of a corporation is entitled to most information we maintain on the corporation, including:

- The corporate return and all supporting schedules, including all Schedule K-1s filed with the return.
- Most other records we have that pertain to the corporation. These records include a printout, or transcript, of the corporate account and most of the audit report, including the narrative report, workpapers, letters, and supporting documents. (See GTAM 3300, Authorized Disclosure of Information).
- Information directly relating to the resolution of tax issues in a judicial or administrative proceeding. (See GTAM 3310, Judicial or Administrative Tax Proceedings).

The Disclosure Office must review the records for any information exempt from disclosure, including proprietary information and informants' identities prior to releasing the information.

We do not release copies of the audit report until after we have closed the examination and issued an assessment, refund, or no-change letter. See GTAM 3300, *Authorized Disclosure of Information*.

**NOTE**: Usually, shareholders owning 100% of a corporation's stock are officers or directors of the corporation. However, a 100% shareholder might not be an officer or director of the corporation. Regardless of percentage of stock ownership, the above disclosure guidelines apply only to shareholders who are officers or directors of the corporation and the corporation's authorized representative.

#### Other Shareholders

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Shareholders who are not corporate officers or directors may have access to the following limited information:

- The Schedule K-1 that pertains to them. Shareholders cannot access a copy of the corporate return, nor any of the Schedule K-1s relating to the other shareholders.
- The portion of the audit report pertaining to the adjustment passed through to them. (See GTAM 3300, *Authorized Disclosure of Information*).
- The amount of the adjustment allocated to them. The shareholder may not access the amount of the adjustment allocated to any of the other shareholders.
- Information that directly relates to the resolution of tax issues in a judicial or administrative proceeding. (See GTAM 3310, Judicial or Administrative Tax Proceedings).

Before we can release the records, the Disclosure Office reviews them for any information exempt from disclosure or that the shareholder may not access. (See GTAM 3300, *Authorized Disclosure of Information*, for a description of the information exempt from disclosure and our practice concerning the release of audit and hearing officer reports.)

**NOTE**: Under CR&TC section 19545, the transactional relationship criteria would apply more often to shareholders who are not officers or directors of an S Corporation. For example, if we revise the Accumulated Adjustments Account and the adjustment passes through to the shareholder, the shareholder may receive a copy of the Account that was filed with the corporate return. This information has a direct transactional relationship to the adjustment on the shareholder's individual return.

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### 3322 Information on Individual Shareholder Returns

We cannot disclose information on a shareholder's tax return to the corporation or the other shareholders.

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## 3323 Group Return of Nonresident Shareholders

CR&TC section 23810 provides that certain nonresident shareholders may file a group nonresident return on Form 540NR. Each shareholder included in the filing group is entitled to the following information:

- Form 540NR (side 1 and 2).
- Schedules attached to the Form 540NR, showing the computation and apportionment of California source income, losses, deductions, and credits.
- Parts of any schedule attached to the Form 540NR that show the shareholder's distributive share of the corporate and California source income, losses, deductions, credits, and the computation of tax on the shareholder's distributive share.

We cannot disclose any information to an individual shareholder that shows other shareholders' allocation of corporate and California source income or tax computations.

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#### 3330 DISCLOSURE GUIDELINES - INDIVIDUALS

If requested by the individual taxpayer, we can disclose the following information:

- Closed audit reports
- Copies of tax returns
- Account transcripts
- Collection progress reports
- Closed investigation reports
- Information from outside sources (IRS, DMV, and Board of Equalization).

**NOTE**: We cannot disclose some IRS information, such as IRS IMF and BMF transcripts, "*Protestor*" or "*Investigation*" codes.

Individual taxpayers and their authorized representatives can receive copies of their audit files *once the Review process is completed*. Sometimes, we issue Notices of Proposed Assessment before reviewing the case to protect the statute of limitations. We do not disclose the audit file to the taxpayer until the Review process is complete. We disclose non-proprietary information when the audit investigation is complete. The audit is not complete until the review is complete. Our practice generally conforms to the provisions of the Information Practices Act, which mandates the disclosure of information to individual taxpayers (California Civil Code section 1798.30-1798.44).

The "audit file" includes:

- The Narrative Report
- The Event Log
- · All workpapers, and supporting material.

Individual taxpayers may not see any document, or portion of a document, that discloses:

- Proprietary systems information
- Other proprietary information
- Audit selection standards
- Information from or about informants.

All requests should be in writing. Under most circumstances, authorized representatives should provide a power of attorney from the taxpayer.

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Remember: before disclosing any information, *contact the Disclosure Unit* for approval.

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### 3340 DISCLOSURE GUIDELINES - PARTNERSHIPS

Partnerships and their authorized representatives may obtain copies of their audit files once the Review process is completed. We disclose non-proprietary information to a partnership when the audit investigation is complete before the discovery process in Superior Court litigation, although no statute requires it. This practice generally conforms to the provisions of the Information Practices Act, which mandates disclosing information to individual taxpayers (California Civil Code section 1798.30-1798.44). The department asserts that the audit investigation is not complete until the review process is complete.

The type of partnership concerned determines to whom you may disclose information.

## **General Partnership**

A general partnership has the following characteristics:

- Two or more partners
- The partners function as one for the management of the partnership
- All partners are liable for the partnership's total debts

General partnerships are not required to file with the Secretary of State or pay a minimum tax. General partnerships are subject to the personal income tax disclosure provisions (see GTAM 3330, *Disclosure Guidelines – Individuals*). <u>All our information for a general partnership is confidential, and cannot be released to the public.</u>

#### **Limited Partnership**

Generally, a limited partnership has the following characteristics:

- Two or more partners with at least one general partner and one limited partner.
- General partners manage the partnership's daily business activities and each general partner is individually liable for the partnership's total debt.
- Limited partners do not share in the management of the partnership and each partner's liability is limited to the amount that they have invested in the partnership.

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Limited partnerships register with the Secretary of State. Those doing business in California must pay a minimum tax under the provisions of CR&TC section 23081.

#### Other Entities

Other types of entities, such as Limited Liability Companies and Real Estate Mortgage Investment Conduits, may elect treatment as a partnership for tax purposes. Generally, these entities have more characteristics in common with limited partnerships than with general partnerships. You should apply the disclosure guidelines on limited partnerships to these entities. (See GTAM 3344, Limited Partnerships – Public Information).

Investors in Limited Liability Companies and Real Estate Mortgage Investment Conduits may be known as members or owners rather than "partners." Members or owners have some of the same characteristics as a general or limited partner. Consider whether the investors manage the entity's business and if they have liability for the entity's debts.

**NOTE**: If you have reviewed the general disclosure rules and you cannot decide if you should disclose the information, then *do not disclose the information*. Tell the partner or representative you are not sure if you can provide the requested information, and that you will call back to confirm your findings. Discuss the issue with your supervisor and, if necessary, contact the Disclosure Office.

General Partnerships – Partner Access to Records
Limited Partnerships – Partner Access to Records
Regular Partnerships – Public Information
Limited Partnerships – Public Information
Information on Individual Partner Returns
Group Return of Nonresident Partners

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## 3341 General Partnerships – Partner Access to Records

The partnership's authorized representative and all partners are entitled to most information that we maintain on the partnership, including:

- The complete partnership return and all supporting schedules, including all Schedule K-1s filed with the return.
- Most of our other records pertaining to the partnership, including a printout, or transcript, of the partnership account and most of the audit report (narrative report, workpapers, letters, and supporting documents).
- Information that directly relates to the resolution of tax issues in a judicial or administrative proceeding. (See GTAM 3310, *Judicial or Administrative Tax Proceedings*, for additional information.)

See GTAM 3300, Authorized Disclosure of Information, for additional information.

Before we can release the records, the Disclosure Office must review them for any information exempt from disclosure.

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## 3342 Limited Partnerships – Partner Access to Records

A partner's access to information depends on whether the partner is a general partner or a limited partner.

The authorized representative of the partnership and the general partners are entitled access to the same information as those of a regular partnership (see GTAM 3341, *Regular Partnerships – Partners Access to Records*).

The limited partners of the partnership are entitled access to the following limited information:

- The partnership return, including supporting schedules, with the *exception* of the Schedule K-1s. Limited partners are entitled to see only a copy of the Schedule K-1 pertaining to them. We do not allow limited partners any access to the Schedule K-1s pertaining to the other partners.
- The printout or transcript of the partnership account and the portion of the audit report (narrative, workpapers, letters, and supporting documents) pertaining <u>only</u> to the adjustment passed through to them. (See GTAM 3300, *Authorized Disclosure of Information*, for additional information.)
- The amount of adjustment allocated to them. <u>Limited partners cannot see</u> the amount of the adjustment allocated to any of the other partners.
- Information that directly relates to the resolution of tax issues in a judicial or administrative proceeding. See GTAM 3310, Judicial or Administrative Tax Proceedings.

Before we can release the records, the Disclosure Office must review them for any information exempt from disclosure or that the limited partner can not see. (See GTAM 3341, Regular Partnerships – Partners Access to Records)

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# 3343 Regular Partnerships – Public Information

Regular partnerships are subject to the personal income tax disclosure provisions (see GTAM 3330, *Disclosure Guidelines – Individuals*). All of our information on the regular partnership is confidential, and *cannot* be released to the public.

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## 3344 Limited Partnerships – Public Information

We can disclose the following information on limited partnerships to the public:

- Partnership name and address
- Date of registration with the Secretary of State
- Tax year adopted
- Due date of the partnership return
- Whether a return was filed
- Filing date of the partnership return
- Total unpaid amount (including tax, penalty, and interest) for each tax year, <u>without a breakdown</u>
- Status of the partnership (e.g., terminated or Secretary of State registration withdrawn)
- Name, date signed, and title of the person who signed the return
- Industry code

**NOTE**: Names and addresses of the partners are not public information.

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### 3345 Information on Individual Partner Returns

We cannot disclose information on a partner's tax return to the partnership or the other partners, regardless of the type of partnership or type of partner.

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## 3346 Group Return of Nonresident Partners

CR&TC section 18535 says that certain nonresident partners and Limited Liability Company members may file a group nonresident return on Form 540NR. Each partner or member in the filing group is entitled to the following information:

- Form 540NR (side 1 and 2).
- Schedules attached to the Form 540NR, showing the computation and apportionment of California source income, losses, deductions, and credits.
- Parts of any schedule attached to the Form 540NR that show the partner's distributive share of the partnership and California source income, losses, deductions, credits, and the computation of tax on the partner's distributive share.

We cannot disclose any information to a partner or member about the other partners' allocation of partnership and California source income or tax computations.

**NOTE**: If you have reviewed the general disclosure rules and you cannot decide if you should disclose the information, then *do not disclose it*. Tell the shareholder or representative that you are not sure if you can provide the requested information, and that you will call back to confirm your findings. Discuss the issue with your supervisor and, if necessary, contact the Disclosure Office.

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### 3400 OFF-SITE SECURITY CONSIDERATIONS

We must exercise due diligence to protect the confidentiality of all information by restricting use of PASS PC equipment and the PASS system. Use these guidelines to protect the security of all confidential information. Use extra caution when appropriate.

- Do not leave the PC on and unattended.
- Do not let family members or friends access the laptop, tax return, and other case-related information while you are telecommuting.
- Do not leave the PC or audit records in an unsecured location such as a vehicle.
- Do not leave the PC unattended while connected to the system, or when using the PC to work offline.
- Physically secure the PC to reduce the risk of theft.
- Physically secure any diskettes that contain confidential information.
- Use the screen-saver password feature when using your PC.

GTAM 3410 Passwords
GTAM 3420 PASS Authorization Setup

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#### 3410 Passwords

To protect the confidentiality of taxpayer information, all network and mainframe systems are password protected. You should also use the screen-saver password feature. These password features help us to protect confidential taxpayer information and proprietary information.

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## 3420 PASS Authorization Setup

We grant different authorization levels based upon the roles of audit staff. A PASS user can have a primary role (e.g., auditor), temporary role (e.g., team member), or other authorization level.

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#### 3500 DESTRUCTION OF CONFIDENTIAL INFORMATION

Place all paper waste items containing confidential taxpayer information into confidential destruction boxes or shred them.

Return confidential material obtained in the field to our office for proper destruction.

The Department of General Services will destroy floppy disks and CDs containing confidential information or outdated commercial software. Please send your outdated floppy disks/CDs in a secure package *without any external reference to confidential data* contained therein to:

## **Program Offices**

### Mail:

Audit Technology & Support Bureau Attention: Audit Asset Management Team - Mail Stop D-5 PO Box 1998 Rancho Cordova, CA 95741

### Route Slip:

Audit Asset Management Team Mail Stop D-5

#### **Central Office**

#### Route Slip:

Audit Asset Management Team Mail Stop - D-5

## Hand Carry:

Audit Asset Management Team – Coordinates F5/2

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### 3600 OUTSIDE REQUESTS FOR INFORMATION

CR&TC section 19542-19564, permits disclosing limited information to the individual taxpayer, authorized taxpayer representatives, Legislative Committees, authorized personnel of the IRS, and tax officials of this state and of other states that impose income taxes.

We do not give income tax returns or related information to Political Reform Audit Program personnel to perform political reform audits and reports!

GTAM 3610 Taxpayer Request for Copy of Tax Return

GTAM 3620 Federal Tax Return Information

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## 3610 Taxpayer Request for Copy of Tax Return

We will provide a copy of personal income tax and business entity tax returns filed by the taxpayer, upon request. We charge \$20, in advance, per tax year for the copies.

Taxpayers should send their request and payment to:

RID Unit MS C-2 Franchise Tax Board PO Box 1468 Sacramento CA 95812-1468

We waive the fees if:

- Taxpayer states they are the victim of a designated California or federal disaster.
- Taxpayer request copies from a district office where we assisted them in completing their return.

You should not be receiving payment for copies of tax returns. These requests should be handled by the RID Unit.

See GTAM 3300, *Authorized Disclosure of Information*, if a taxpayer requests copies of our audit workpapers.

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#### 3620 Federal Tax Return Information

Authority to inspect a state tax return does not necessarily imply authority to inspect tax information received from the Internal Revenue Service. Internal Revenue Code section 7213(a)(2) makes the unauthorized disclosure of IRS data by state employees a felony. IRC section 7217 also subjects state employees to civil damages.

We must use additional information security measures when we receive any document containing confidential Federal Tax Information directly from the IRS. This includes items such as copies of returns, files, documents, letters, RAR's and "no record" responses. If the IRS source data becomes part of an audit file, stamp (in red ink) the face of the document "CONFIDENTIAL IRS INFORMATION" and stamp the cover of the audit file "FILE CONTAINS CONFIDENTIAL IRS INFORMATION."

If you have any questions, please contact your supervisor

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## 3700 WORKLISTS

GTAM 3710 Individual Worklist GTAM 3720 Group Worklist

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### 3710 Individual Worklist

The individual worklist lists of all the case units assigned to a responsible owner. The responsible owner can access this list.

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## 3720 Group Worklist

Group Worklists are inventory lists that:

- Identify case units to assign to auditors or reviewers.
- List completed cases.

Each Group Worklist has a Responsible Owner. There are Group Worklists for all completed cases and all surveyed cases. Several Group Worklists usually exist for cases awaiting assignment.

Each Program Area determines how best to serve their business needs in establishing, monitoring, and updating their group's worklists.

Each owner should maintain Group Worklists to maintain only the optimal numbers of cases. Users may change the responsible owner of a Group Worklist.

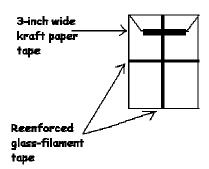
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#### 3800 MAILING TAX RETURNS

### **Envelopes**

Tape all 9" x 12" or larger envelopes containing material of one-inch thick or more once around the length and once around the width (at the center) using 3/4 inch or larger reinforced "glass filament tape." In addition, tape envelopes that are secured only with a metal clasp across the closure using three-inch wide kraft paper.



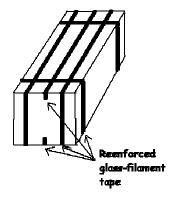
#### **Boxes**

When shipping a box, use \(^3\)4 inch or larger reinforced "glass filament tape":

- Twice around the length (once at each end)
- Twice around the width (once at each end)
- Across the seam of the lid (top and bottom).

Label all sequences of boxes as part of a series, so the recipient knows how many to look for (e.g., Box 1 of 3). Alert the recipient by email or telephone before sending the boxes. Include a packing list for each box. Recipients should immediately verify that the contents mailed match the packing list, and that they have received all the boxes in the series. They should then contact the sender to confirm that they received all of the boxes and documents intact.

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**NOTE**: Avoid using the "Record Center" type box (archive box with hand-slot openings and removable lid) if possible. They are more difficult to secure against unauthorized access. If you cannot avoid using this type box, seal the lid and the hand-slot openings with ¾ inch or larger reinforced "glass filament tape." This procedure protects the integrity of confidential documents throughout transit, so that shipments arrive at their destination on time and complete.

If you have any questions about how to ship materials, please contact Service and Supply, at \* \* \* \* \* \*, or the Mail Operations unit, at \* \* \* \* \* \*.

**NOTE:** ((\* \* \*)) = Indicates confidential and/or proprietary information that has been deleted.

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## **4000 PRE-AUDIT ANALYSIS**

Pre-audit analysis will help you determine whether to begin an examination. During pre-audit analysis:

- Analyze an entity.
- Scope returns (physical or online).
- Review the ownership hierarchy.
- Determine the audit history of the taxpayers.
- Evaluate the impact to future tax years.

GTAM 4100	ENTITY ANALYSIS
GTAM 4200	SCOPING (AUDIT SCOPE DETERMINATION)
GTAM 4300	SURVEYS
GTAM 4400	REQUESTING RETURNS
GTAM 4500	REFERRALS

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### 4100 ENTITY ANALYSIS

PASS contains much of the taxpayer information needed when scoping the case. However, PASS does not replace the BETS (Business Entity Tax System) or the TI (Taxpayer Information) system. When reviewing the taxpayer, look at the taxpayer's BETS or TI account. Here are some items to look for:

- **Taxpayer Address** Verify the correct taxpayer address.
- **Prior Notices** Look for and verify the status of all prior year notices. Is the same issue under examination?
- **Comments** Read all comments posted to the taxpayer's account.
- Amended Returns Check for amended returns filed for the years under examination.
- **Statute of Limitations** Compare system filing dates to the dates stamped on the physical returns.
- **Line Item Amounts** Compare the specific line item amounts on the system with those on the physical returns.
- Penalties Does the system show penalties assessed after the filing of the original returns?
- Bankruptcy Is the taxpayer account flagged for bankruptcy? Should the
  account be flagged for bankruptcy? See GTAM 20100, GTA Bankruptcy
  Procedures Introduction, for additional information.
- Refunds Were amended returns filed? Were refunds sent? Payments received?
- **Corporate Status** Is the corporation *Active*, *Suspended*, *Inactive*, etc.? Is there a corporate assumer?

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## 4200 SCOPING (AUDIT SCOPE DETERMINATION)

Scoping is a critical step in the audit process. Focus on the issue's materiality. You must decide if an audit justifies the commitment of resources. If you decide there is little or no audit potential, survey the returns. If you are uncertain, you should discuss the issues with the audit supervisor.

There are many facts and circumstances that indicate whether to pursue an examination. Examine each case on its own merit.

GTAM 4210 Audit Program Worksheet (Scope Sheet)

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## 4210 Audit Program Worksheet (Scope Sheet)

Use the *Audit Program Worksheet/Scope Sheet* (Form FTB 6833) to identify all material items that need further investigation. You can find this form on PASS. Use the Worksheet to identify audit issues and any supporting documents or data you will need.

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### 4300 SURVEYS

If, after scoping the returns, you determine an examination is not warranted, recommend a survey of the returns. While the decision to survey a return is usually your decision, in certain situations your supervisor or lead may review the recommendation.

When returns are surveyed, write "S" (for *survey*), followed by your initials, on the upper right of the return.

You may survey a case without opening it for audit.

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## 4400 REQUESTING RETURNS

GTAM 4410	Alternative Methods (Non-PASS)
GTAM 4415	Rush Telephone Requests
GTAM 4420	Requesting Federal Information/Returns
GTAM 4430	Unfiled Returns Received during an Audit
GTAM 4440	Document Locator Number (DLN)

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## 4410 Alternative Methods (Non-PASS)

You may request tax returns from Data Services and Storage Section through PASS, video request, or rush telephone request.

If the taxpayer has filed an amended return for the years you are requesting, also request these.

You may also use a paper request (Form FTB 6180) for Form FTB 540, Form FTB 541, and Form FTB 565. It may take three to four weeks to receive the tax returns. To shorten the time, write "RUSH" in red across the top of the form. If the tax return is not available from Data Services and Storage Section, "outsearch" the missing return. During an "outsearch," Data Services and Storage Section staff physically looks for the return in other units.

To request an outsearch, use the *Corp. Folders Request* - Form FTB 6237 or the *Request and In-Lieu Form* (Form FTB 6180). You can also use the form returned by Data Services and Storage Section (including any "out" information) to request an outsearch. Write, "please outsearch" on the returned forms. You should also indicate a search date (not to exceed 30 days) in the upper right corner.

If they cannot locate the folder by the search date, Data Services and Storage Section returns the request as unable to locate. If you still need the folder, provide another outsearch date and resubmit.

For telephone requests, call Data Storage only for:

- Protest cases.
- Legal cases.
- · Sensitive cases.
- Claims.
- Cases involving jeopardy assessments, tax clearance, short statutes, or misapplied payments.

If the tax return is not available from Data Services and Storage Section, "outsearch" the missing return. During an "outsearch," Data Services and Storage Section staff physically looks for the return in units other than its own.

If you receive "out" information that the return is out to units 732, 790, or PIT Sample, notify a PIT supervisor to request the return.

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## 4415 Rush Telephone Requests

When you need to make a rush telephone request for a tax return, please contact the appropriate location.

Central Office	Depot Park
Rush Request Line: * * * * * *	Rush Request Line: * * * * * *
Mail Stop: C-2	Mail Stop: C-2
PIT Process Year 1999 (Tax Year 1998)	PIT Process Year 1998 (Tax Year 1997)*
PIT Process Year 2000 (Tax Year 1999)	PIT Process Year 2001 (Tax Year 2000)
PIT Payment Documents – all	BE Payment Documents – all
565 Partnership	BE Returns – all
541 – Fiduciary (Estates and Trusts)	LLC
HRA Claims	BE NPA, Jeopardy Assessments, Exempts, etc.
	PIT LIM
	PIT NPA

**NOTE:** ((\* \* \*)) = Indicates confidential and/or proprietary information that has been deleted.

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## 4420 Requesting Federal Information/Returns

Request all federal tax information on the *Federal Tax Information Request* - Form FTB 6227. Type or print each request in ink.

Once the reviewer (IRS designee) reviews and signs it, put the form in the appropriate sort bin or route it to:

The reviewer's signature certifies the requestor has a *need to know* and the information contains only what is necessary to resolve tax issues.

#### NOTE:

- Do not send the Federal Tax Information Request Form FTB 6227 directly to IRS.
- If a second request is necessary, write "SECOND REQUEST" on the 6227 request form.

Complete a separate request for each taxpayer. For taxpayers filing jointly, only one request is necessary. You can request more than one tax period *and* more than one type of IRS document on the same 6227 request form.

You can request the following types of information from the IRS:

**MFTRA (Master File TRAnscripts) transcripts** - These files are the tax accounts for each tax year.

- Individual Master File (IMF) transcript for individual taxpayers.
- Business Master File (BMF) transcript for all business entities such as corporations, partnerships, and fiduciaries.

RTVUE (Return View) or BRTVU (Business Return View) - An electronic snapshot of the originally filed returns for the last four filed.

**Current Collection Information** – Request this information by writing, "latest address" or "all levy sources", on the "Other (describe)" line on the 6227.

**Copies of Revenue Agent Reports/Tax Returns** - To obtain copies of Revenue Agent Reports or tax returns, check the "Photocopy of return" or "Photocopy of RAR" boxes.

Workpapers, Schedules, or Other Documents - To obtain copies of Revenue Agent Report documents, workpapers, schedules, etc., write a specific description of the data on the "Other (describe)" line.

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**NOTE**: *Do not* give copies of IMF or BMF transcripts to taxpayers or their representatives. They contain *"official use only"* information. Advise taxpayers and their representatives to contact the IRS.

**NOTE**: Before requesting Revenue Agent Reports, tax return copies, workpapers, schedules, or other documents, get a transcript for each tax year. If the case has an open audit indicator or is currently in litigation, the IRS cannot provide the file until the case has closed.

If reviewing the transcript reveals that you need additional documentation, you may request Revenue Agent Reports, tax return copies, workpapers, schedules, or other documents. Attach the transcript fewer than 30 days old to the new request.

Requests for transcripts should take two to four days. All other information requests can take four to six weeks. If a second request is necessary, write "SECOND REQUEST" on the 6227 request form.

Stamp all audit files containing IRS information to indicate they contain confidential IRS tax information. Always keep the 6227 form used to request additional IRS data with the case. Never throw it away! Maintain the record until the file goes through the normal destruct process.

When we use an FTB form 6227 to request IRS tax information that ultimately does not result in a change to the California tax liability, upon closing the case, return the yellow route sheet with the 6227/IRS documentation to:

## 6227 Tracking System Mail Stop D7

Include a copy of the 6227 request and indicate the results of the case on the form.

**NOTE**: All ADP/IDRS - Document 6209 books *must* be locked up when not in use. They contain "official use only" information.

If you have questions or need further information, you may contact the IRS Coordinator or Assistant Coordinator.

**NOTE:** ((\* \* \*)) = Indicates confidential and/or proprietary information that has been deleted.

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## 4430 Unfiled Returns Received during an Audit

Occasionally, we receive returns during an audit, including amended or original returns. Date returns when you receive them. Route them to Audit Business Support for processing. Make a copy of the return to be included in the workpaper files. Mark the copy clearly as, "TAXPAYER'S COPY."



- If the tax return is related to an ongoing audit, incorporate the information contained therein into the examination. Photocopy the return and write in red across the face of the return, "TAXPAYER'S COPY."
- Route the original return through Central Office Audit Business Support, Mailstop D-727, for processing. Include any specific instructions (e.g., requesting the tax return be returned to you after processing).
- Once the return is processed and online (usually about one week), update the case unit with the Document Locator Number and any other information available. You can retrieve this information without having to create a second case unit.

For routing instructions, see GTAM 13700, Routing the Physical & Electronic Files.

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## 4440 Document Locator Number (DLN)

The Document Locator Number is a unique number assigned to a tax return. The DLN shown on PASS (the actual State Business Return Database (SBRD) DLN, and the DLN shown on BETS all differ from one another.

The DLN found on PASS is twelve spaces (only ten digits are visible), comprised of the following:

- Digits 1-2 are the process year
- Digit 3 is a filler (zero)
- Digits 4-8 are the DLN block series
- Digits 9-10 are the item/sequence number
- Digits 11-12 are spaces used as a placeholder for a possible suffix if needed later

The DLN found on BETS is a 13-digit number, comprised of the following:

- Digits 1-2 are the source input code (30 = EFT payments, 40 = regular payments, 50 = returns, etc.)
- Digits 3-4 are the process year
- Digit 5 is a filler (zero), but only on C-corporation & S-corporation returns\*
- Digits 6-10 are the DLN block series\*
- Digit 11 is a placeholder for a possible suffix if needed later
- Digits 12-13 are the item/sequence number

Examples: The DLN for the same corporation return shown on both PASS and BETS would be as follows:

#### **PASS**

DLN of 9701674107. Translated as follows: 97 = process year, 0 = filler, 16741 = DLN block series, 07 = item number, 2 spaces

<sup>\*</sup> **NOTE**: Partnership returns have a six-digit DLN block series number, so there is no "zero" filler in that position on Partnership returns.

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### **BETS**

DLN of 5097016741007. Translated as follows: 50 = source input document was a paper return, 97 = process year, 0 = filler, 16741 = DLN block series, 0 = placeholder, 07 = item number

Except for a corporation, tax returns are filed in DLN order. Consequently, it is important to locate the DLN clearly on the face of the return. Do not cover the DLN with holes and/or fasteners. If the DLN becomes covered, rewrite the number in the same color as that stamped on the return. If a file does not have an associated DLN, Data Services and Storage Section files the case in alphabetical order. Make sure the face of the physical workpaper file clearly shows the taxpayer's name, tax year, and social security number/corporation number or taxpayer identification number. If this information is missing, write it in red in the upper right hand corner.

If we issue a Notice of Proposed Assessment without a return (Notice of Proposed Assessment Circle File), Data Services and Storage Section files the case in Notice of Proposed Assessment number order. When Data Services and Storage Section searches for a document with a LIM date, it checks all appropriate files.

See GTAM 13242, *NPA Circle File*, for additional information. See GTAM 13800, *Preservation of Audit Files (LIM Dating)*, for additional information.

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#### 4500 REFERRALS

You may refer cases or case units between audit programs or offices because of:

- Your evaluation of the file,
- A request from another auditor, or
- A request from the taxpayer after an examination has begun.

Before transferring any case, you must contact the recipient unit or auditor to determine if a transfer/referral is feasible, considering workload constraints. If they accept the case, remember to notify the taxpayer of the case transfer.

The two forms used to route files are:

- Messenger Service Route Slip Form FTB 7000 The route slip provides delivery from mail stop to mail stop within the next business day.
- Hand Delivery Order Form FTB 7545-C The pink hand-delivery order provides delivery to a specified individual within a specified period. Use this form only when a package contains sensitive information or if the route slip time frames do not meet your needs.



## **Transferring Auditor**

- Before transferring any case, contact the recipient unit or auditor. The auditor transferring the case must notify the taxpayer of the case transfer.
- Complete the Audit Report Form FTB 6430 (see GTAM 13230, Complete the Audit Report - Form FTB 6430). Include your and the audit supervisor's telephone number. The Audit Report serves as a transmittal document. Attach a copy of this form to the physical file. In the special remarks section, state the reason for the referral, and the model number. Create both a physical and electronic Audit Report -Form FTB 6430. Each should note that there is an associated electronic/physical file.
- Complete the *Messenger Service Route Slip* Form FTB 7000. Include the correct Mailstop (see the EMC bulletin board "*MAILSTOP*" for a complete listing of mailstop codes). In the comments section,

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state the taxpayer name, TPID, tax years, reason for the referral, and model number.

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- Assemble the physical file (see GTAM 13260, Assemble the Physical Case). The physical PASS file is comprised of the Received Correspondence Index, the Received Correspondence (which includes photocopies, exhibits, and other miscellaneous items), and the tax returns.
- For non-PASS cases, physically route the complete file.
- Attach the Messenger Service Route Slip to the physical file, and route.
- Transfer the electronic file to the new owner.
- Remember to close or transfer the case on any applicable non-PASS inventory system.
- If the case includes a Statute of Limitations waiver, attach the original waiver to the face of the return to which it applies. (see GTAM 10220)

## **Receiving Auditor**

 Notify the taxpayer when you receive the transferred case. Provide the taxpayer with your name, address, phone number, etc.

For PASS cases, you must ensure that the electronic file and physical file reach their new owner. Transfer the physical file at the same time as the electronic file. Failure to follow case file transfer procedures may result in the delay of transferred cases, expired Statutes of Limitations, unprocessed Notices of Proposed Assessment, etc. See GTAM 13280, Transfer Case/Case Unit to Next Level, for transfers to the GTA Technical Resource Section (GTA Program Review).

GTAM 4510 Transfers to Non PASS Users

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#### 4510 Transfers to Non PASS Users

When transferring cases to non-PASS users such as auditors who do not yet have the PASS system, do the following:



- Contact the Recipient Unit or Auditor (by telephone or email).
- Note the contact in the Event Log.
- Print the case and assemble with the physical file.
- Transfer the physical file and the printed PASS file.
- Note the transfer in the Event Log.
- Close the electronic PASS file (see GTAM 13000, Closing a Case/Case Unit).
- Transfer the electronic file.

You can print an entire case unit from PASS. The files will print in the following order:

- Index
- General Information
- Notice List
- Team Members
- Address Book
- Task Plan
- Event Log
- Sent Correspondence
- Workpaper File
  - Administration
  - Reports
  - Schedules
  - Preliminary Analysis
  - Draft Correspondence (generally, nothing should be in this folder See GTAM 9600, *No-Change Letters*, for details)
  - Sent Correspondence

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- Received Correspondence
- Notes
- Audit Support
- Issue folders

The cross-reference footers, which appear on each printed document within a specified section, are listed below:

- Section A General Information
- Section B Notice List
- Section C Team Members
- Section D Address Book
- Section E Task Plan
- Section F Event Log
- Section G Sent Correspondence
- Section H Workpaper File (only the sections that have documents in them are printed and included on the Index)

Print each workpaper document with the cross-reference: Type\Folder Name\Document Name\page #. For example, if printing the third document in the Received Correspondence folder in type Audit, named "Fax 02-28-1997", which consists of two pages; it would print as follows: Audit\Received Correspondence\Fax 02-28-1997\Page 1 of 2, and Audit\Received Correspondence\Fax 02-28-1997/Page 2 of 2. Use this information to cross-reference the document to the narrative or write-up.

**NOTE**: The folder name in the footer of Draft Correspondence or Sent Correspondence documents prints as *Correspondence*. This should not create a problem since generally all documents in the Draft Correspondence folder are deleted when the case is closed. For the exceptions, see GTAM 9600, *No-Change Letters*.

# Taxpayers Serving in Combat Zones

Tax relief is available for military personnel deployed overseas or serving in a Presidentially declared combat zone. The California provisions mirror the federal relief provisions suspending deadlines for filing certain documents.

We automatically extend the period for performing the following acts for 180 days after the taxpayer returns to the United States:

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- Filing a protest
- Appealing FTB's action on a protest to the State Board of Equalization
- Filing a claim for refund
- Appealing FTB's denial of a claim for refund
- Replacing property under IRC 1031
- Paying tax bills
- Responding to audit requests

The extension is free from interest or penalties. If an audit is in progress, we suspend the audit unless the taxpayer designates someone else to take over. The taxpayer must notify us immediately upon return. This relief is for individual taxpayers only.

Use the following procedures to update the taxpayer's account upon knowledge they are serving in a combat zone or are stationed overseas.

IF:	THEN:	RESPONSIBILITIES
Taxpayer contacts employee outside of Audit	Employee forwards contact information to Audit Business Support.	<ul> <li>Audit Business Support will forward:         <ul> <li>Audit correspondence to the unit/maker.</li> <li>Correspondence regarding a pending NPA to the Protest Unit, other than notices issued by unit 348.</li> <li>Correspondence regarding unit 348 notices to maker.</li> </ul> </li> </ul>
Taxpayer calls employee outside of Audit and there is audit activity	Employee will obtain name of audit staff from the caller.	<ul> <li>Update TI account</li> <li>Notify audit staff of call via email.</li> <li>If employee cannot ascertain the name of the audit staff, the employee will send the email to the manager of the GTA Technical Resource Section. That section will assume the</li> </ul>

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		reconneibility of identifying the
		responsibility of identifying the proper audit staff.
Taxpayer contacts audit	Audit staff obtains from the taxpayer (or	Audit staff will:
staff directly, Or Audit staff receives taxpayer contact information from Audit Business Support, Or	person calling on behalf of taxpayer) necessary information to complete responsibilities.	Check the taxpayer's TI account to see if the military data field says "Yes" (Audit Business Support can assist with TI transactions). If so, verify the "Begin Date" and "End Date" on the Military Service Display screen (CID "ML").
Audit staff receives email from FTB employee regarding taxpayer's call		<ul> <li>Add a comment to the taxpayer's TI account: Taxpayer is serving in a combat zone.</li> <li>Record the caller's name and relationship to the taxpayer.</li> <li>Suspend audit action on the account until 180 days after taxpayer returns from combat.</li> <li>If audit is in progress, and the taxpayer requests it, delay any action and provide follow-up dates.</li> <li>Add a note to the PASS file and keep the case in</li> </ul>
		your PASS inventory. Follow-up with taxpayer when they return and continue the audit.  • Determine if taxpayer will benefit from receiving Publication 1021 California Tax Information for Military Personnel. It

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provides information
about filing returns,
signing on behalf of a
spouse, what to do if
owing back taxes, and
military pay is taxable
<ul> <li>Follow up any</li> </ul>
discussions with a lett documenting status.

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# **5000 OPENING A CASE**

GTAM 5100	ASSIGNING ADDITIONAL WORK
GTAM 5200	GENERAL INFORMATION WINDOW
GTAM 5300	PASS TASK PLAN
GTAM 5400	CASE TYPE AND CASE STATUS
GTAM 5500	TEAM AUDITS

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### 5100 ASSIGNING ADDITIONAL WORK

Supervisors or leads assign cases from the Group Worklist to the audit staff. Based upon level of experience, audit staff may also assign work to themselves.

When assigning work to the Worklist, determine if your audit program separates the models between the field and Central Office. Work closely with the Modeling Team Lead for your program in determining the appropriate models available.

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## **5200 GENERAL INFORMATION WINDOW**

GTAM 5210	Current Summary Tab
GTAM 5220	Audit Tab
GTAM 5230	Protest Tab
GTAM 5240	Untimely Protest Tab
GTAM 5250	Claim Tab
GTAM 5260	Docketed Protest/Claims Tab
GTAM 5270	Appeals Tab
GTAM 5280	Litigation Tab
GTAM 5290	Settlement & Settlement Amounts Tabs

A case unit is automatically created when we assign a taxpayer in PASS. Part of the case unit that is created is the General Information window. The General Information window is partially pre-filled with information obtained from different sources, to provide a general summary of the current standing of the case or case unit. Verify all of this information.

The General Information Window is divided into ten tabs:

- Current Summary
- Audit
- Protest
- Untimely Protest
- Claim
- Docketed Protest/Claims
- Appeals
- Litigation
- Settlement
- Settlement Amounts

You cannot view the Legal and Settlement tabs unless you have proper authorization.

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## 5210 Current Summary Tab

The Current Summary tab gives the user a general overview of the case unit. Some of the fields are discussed below.

**Responsible Owner** - Every case and case unit must have a Responsible Owner who is in charge of the case unit. Each case unit can have only one Responsible Owner. The Responsible Owner of the primary case unit is the Responsible Owner for the case. In a team audit, team members consist of the Responsible Owner and one or more team members.

ID Number - A number that identifies taxpayers, such as the

- FEIN (Federal Employer Identification Number),
- CCN (California Corporation Number), or
- SSN (Social Security Number).

**Taxpayer ID Type** – The type of taxpayer identification associated with the taxpayer. The possible types are

- FEIN (Federal Employer Identification Number),
- CCN (California Corporation Number),
- · SSN (Social Security Number), or
- Unknown.

**Case Unit Creation Date** - The date the case unit was created, either manually or automatically. We use it to measure the audit's effectiveness.

**Case Unit Type** - The classification of the current examination (Audit, Protest, Untimely Protest, or Claim).

Case Unit Status - The current phase in the examination process (e.g., preaudit, work in progress, review, etc.).

*Fiscal Year* – This is the Taxable Year End for the entity. If the entity has calendar year 1995, the date entered is "12/31/1995." Update this information on all case units. Audit Support uses this data during the case unit closure process.

**Bankruptcy Indicator** - Indicates if this taxpayer is in bankruptcy status. If so, change the Statute of Limitations date to reflect the Bar Date.

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**Priority Case Indicator** - Indicates if this case is a priority.

**Workload Category** - Enter for all case units. Do not charge time to a case unit that does not have a valid workload code. You should have one workload code through the life of the audit. For example, if a case goes through the audit cycle, is subsequently protested, and then goes through the appeals cycle, the workload code should remain the same. See your supervisor or lead for appropriate workloads. Also, see GTAM 13500, Revenue Codes / Workload Codes.

**Next Action** - The next action and the associated next action date information are displayed. Only the most current next action is displayed at a time, unless the tickler becomes overdue.

**IRS Audit Flag** - Mark the box if you get information about an ongoing IRS audit. If you know the IRS Audit Date, complete this field.

**Entity Type** – The taxpayer's form of business. Entity types include C-corporation, S-corporation, Partnership, Estate/Trust, Individual, IRA/Keogh/SEP, Limited Liability Company, Limited Liability Partnership, and Other.

**DLN** – Document Locator Number. See GTAM 4440, *Document Locator Number* (*DLN*), for additional information.

**Statute of Limitations Date** - The Statute date for the case unit. This information is pre-filled, so you *must* confirm this information. Update this field as changes are made to the Statute during the course of the examination.

 If the taxpayer is in bankruptcy, the Statute should refer to the Bar Date as the statute date.

**Suspense Release Date** - If the case is in suspense, enter the date that it is due for release. Record in the Event Log. Although the suspense date puts the case on "hold" for a period, it is still viewable.

**Case Unit Type Date** - The date the case unit was changed to the current type. This helps us measure our timeliness.

**Case Unit Status Date** – The date the case unit was changed to its current status.

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**Waiver Indicator** - Indicates if we received an acceptable waiver for this case unit. Follow usual waiver rules about attaching original copies to the returns and making the appropriate cross-reference notes. See GTAM 10200, *Waivers*, for additional information.

**Amended Return Indicator** - See the following examples of when to check and not to check the Amended Return Indicator:

- Amended returns become a part of the case unit already established for the filer. If you are working an "Audit" type case, and an amended return (non-claim) is filed during, or before the audit process, check the "Amended Return Indicator" box, indicating that an amended return was filed for the current case unit. Do not create any new case units for the amended return.
- If you receive the *amended* return (non-claim) to be worked as an audit, and there is no case or case unit already established for the tax year in question, the amended return is the current case unit. Do not check the "Amended Return Indicator" box.
- If an amended return that is a claim for refund is received, the amended return is the current case unit. You do not need to check the "Amended Return Indicator" box.

**Litigation Potential Indicator**. – Indicates if the case unit has litigation potential.

**Next Action Date**: – Date next action is required.

**IRS Audit Date**: – Date of the IRS audit (if applicable).

**Location**: – Where we conducted the audit, in the field or through correspondence (desk).



- Verify that the information is pre-filled.
- Complete all other fields not automatically filled.
- In the Event Log, note the following:
  - Changes in the Responsible Owner and why.
  - The reason for a priority case, if one.
  - Any change in statute and why.

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- If we received a waiver, and whether for state or federal.
- Why a case was put into Suspense, if applicable.
- If the taxpayer has bankruptcy status.

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#### 5220 Audit Tab

The Audit tab provides general information about work performed during the audit cycle. It includes these fields:

**Complexity** - The complexity codes indicate the examination's complexity and the level of review that we must complete on the case. The Unit Supervisor determines which codes to assign. The complexity codes are:

- High Usually assigned to Program Specialists with the highest of technical skills.
- Medium Assigned to auditors with more experience, such as Tax Auditor, Range B or Associate Tax Auditors
- Low Assigned to Tax Auditors
- None Unassigned

**Notice Agreement** - The box is checked if the taxpayer agrees with the proposed adjustment.

**Notice Type/ Notice Amount** - These fields display the most recent amount. For example, if a Notice of Proposed Assessment was created in the Notice window for \$50,000 on February 1, 1999, and a subsequent Notice of Proposed Assessment for \$10,000 was created on February 15, 1999, only the more recent notice for \$10,000 displays.

Primary Issue - This is the primary issue that the user has selected.

**NPA Jeopardy Flag** - Check this box if a Notice of Proposed Assessment Jeopardy assessment will be or has been issued.

**Total Tax Potential** is the estimated revenue expected from this audit.

**Total Actual Hours** are the cumulative hours charged in the Task Plan to date.

**Total Estimated Hours** are the cumulative hours estimated when completing the Task Plan.

**Primary Staff/ Assigned Date** - Select the primary staff and the date the case was assigned to an auditor. It is crucial to complete the Primary Staff. When

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cases are transferred to another staff, *update the primary staff field* with the new assigned staff. *Keep the original assigned date!* 

**Org Group** is the organizational group that is assigned based on FTB organizational charts. This information is used for supervisory reports and upper level management. All users should verify this information is correct and update with any changes.

**NOTE**: The primary staff is the individual who actually works and resolves the audit. The primary staff is responsible for the audit's completion. While the responsible owner can change as the case unit is transferred from individual or group, the primary staff was designed to remain constant, unless the case is reassigned to a new staff to complete. The primary staff provides a method to identify easily who worked the case. When working team audits, the team lead of the audit is designated as the primary staff.

A primary staff is selected for each type the case unit is worked in. It is crucial to complete the primary staff and the associated assigned date fields. It is the staff's responsibility to update this field. Supervisors should verify that staff completes this information. Unlike the responsible owner, we should keep this field current as the case unit is reassigned.

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#### 5230 Protest Tab

The Protest Tab provides general information about work performed during the protest cycle. It includes these fields:

**Complexity**: The complexity codes indicate the examination's complexity and the level of review to complete on the case. The Unit Supervisor determines these codes. The complexity codes are:

- High Usually assigned to Program Specialists with the highest of technical skills.
- Medium Assigned to auditors with more experience, such as Tax Auditor, Range B or Associate Tax Auditors
- Low Assigned to Tax Auditors
- None Unassigned

**Protest Name** – The name of the protest case. If cases are consolidated, this may differ from the PASS case name.

**Notice Agreement** - At the end of the protest, check this box if the taxpayer agrees at protest to all open issues.

**Notice Type/ Notice Amount** - If multiple notices are entered in the current type, PASS displays the last notice and notice amount.

**Primary Issue** is the primary issue that the user selects.

**Date Hearing Held** - This is the date that the protest hearing was held, if applicable.

**Bill of Rights Date** is 18 months from the date the protest was filed with the Franchise Tax Board, not date received in Audit.

**Protest Amount** is the tax and penalty that the taxpayer protests.

**Total Tax Potential** - The tax potential at protest is the total tax assessed at Audit.

**Total Actual Hours** are the hours charged during the protest.

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**Total Estimated Hours** are the hours estimated when completing the Task Plan.

**Primary Staff/ Assigned Date** – You must select the primary staff. The date should reflect when the case was assigned to an auditor. It is crucial to complete the Primary Staff. We use this information to determine the unit's production statistics. When you transfer a case to another staff, update the Primary Staff field.

*Hearing Requested Date* - If the taxpayer requests a hearing, check this box.

**Date Protest Filed** - Update this field. This is the date the taxpayer filed the protest with the Department, *not* the date the protest was received in a particular unit. It is crucial to complete this information. Update the Bill of Rights Date for each case unit.

Hearing Location

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## 5240 Untimely Protest Tab

The Untimely Protest tab provides data on the work performed during the untimely protest cycle. It includes these fields:

**Complexity**: The complexity codes indicate the examination's complexity and the level of review to complete on the case. The Unit Supervisor determines these codes. The complexity codes are:

- High Usually assigned to Program Specialists with the highest of technical skills.
- Medium Assigned to auditors with more experience, such as Tax Auditor, Range B or Associate Tax Auditors
- Low Assigned to Tax Auditors
- None Unassigned

**Notice Agreement** – At the close of the protest, check this box if the taxpayer agrees to all open issues.

**Notice Type/ Notice Amount** - These fields display amounts once the notice type and notice amount is entered. If multiple notices are entered in the current type, PASS displays the last notice and notice amount.

**Primary Issue** is the primary issue that the user selects.

**Total Tax Potential** - The tax potential at this stage is the total tax assessed at Audit.

**Total Actual Hours** are the hours charged to the untimely protest.

**Total Estimated Hours** are the cumulative hours estimated when completing the Task Plan.

**Primary Staff/ Assigned Date** - Select the primary staff. The date should reflect when the case was assigned to an auditor. It is crucial to complete Primary Staff. We use this information to determine the unit's production statistics. When you transfer a case to another staff, update the primary staff field.

**Date Untimely Protest Filed** shows the date the Untimely Protest was filed with the Department.

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It is important to remember that the filing of an untimely protest will *not* stop the billing. You should determine whether to suspend the billing and collection processes until the resolution of the untimely protest. If a hold is required, make a note in the Event Log and on BETS/TI as appropriate.

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#### 5250 Claim Tab

The Claim Tab provides data on the work performed during the claim cycle. It includes these fields:

**Complexity**: The complexity codes indicate the examination's complexity and the level of review to complete on the case. The Unit Supervisor determines these codes. The complexity codes are:

- High Usually assigned to Program Specialists with the highest of technical skills.
- Medium Assigned to auditors with more experience, such as Tax Auditor, Range B or Associate Tax Auditors
- Low Assigned to Tax Auditors
- None Unassigned

**Notice Agreement** - At the end of the audit, check this box if the taxpayer agrees to the determination.

**Notice Type** - You will issue either a denial letter (full or partial), allow the claim, or issue an assessment. This field is automatically updated.

**Notice Amount** - This field is automatically updated.

**Primary Issue** - This field identifies the issues under consideration at the claim level. If the claim is filed in response to a notice or is a paid protest, the issues should be the same as during the audit process. If the taxpayer initiated the claim, the issues may vary.

**Claim Filed Date** is the date the Department received the claim, *not* the date a particular unit received the claim. This date should be updated for all claim case units. It is crucial to complete this information. Update the Bill of Rights Date for each case unit.

**Amount of Claim** – How much the taxpayer requests. If the taxpayer files an amended return requesting a refund, the amount of the amended tax return is entered in this field. When the taxpayer has paid a Notice of Proposed Assessment to stop accruing any additional interest, include the amount the taxpayer is requesting (i.e. the tax amount the taxpayer paid) in the Amount of Claim field.

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**Amount Denied** is the amount of the requested refund that is denied. If the taxpayer requests \$50,000 (reduction in tax only) and it is determined that the taxpayer's overpayment is \$30,000, then \$20,000 will be the amount denied and the amount in the Notice window.

**Claim Number** - Enter the claim number, if available. Not all claims will have a claim number that we track. The Claims Desk assigns the Claim Number that is on the amended tax return.

**Total Tax Potential** - This field shows the tax potential if denying any part of the claim. The tax potential may differ from the claim amount.

**Total Actual Hours** shows the hours charged to the claim. This field is automatically updated.

**Total Estimated Hours** shows the cumulative hours estimated when completing the Task Plan.

**Primary Staff/ Assigned Date** - You must select the primary staff. The date should reflect when the case was assigned to an auditor. It is crucial to complete the Primary Staff field. We use this information to determine the unit's production statistics. When you transfer cases to other staff, update the primary staff field.

**Bill of Rights Date** - If the claim is not completed within six months, the taxpayer may assume it has been denied and file an appeal with the Board of Equalization. You can modify this date by entering directly in the field.

**Paid Protest Date** is the date the Notice of Proposed Assessment is paid, while working a protest audit. Once the protest is paid, the case is deemed a claim. The user must change the type of the case unit from Protest to Claim. A claim is deemed denied if not worked within six months, and the taxpayer has the right to file an appeal with the Board of Equalization. Incorrect information on the system may lead to erroneous decisions.

**Hearing Requested Date** - This is the date the taxpayer requested a hearing. Taxpayers may request a hearing in their original protest letter or later. Update this information in the General Information window.

**Hearing Held Date** - This is the date the hearing is actually held. Update this field after the completion of the hearing.

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In all cases, it is important to coordinate audit cycles, protest cycles, and appeal cycles for the same taxpayer. You should always check the BETS/TI systems to identify if prior years are under protest or appeal.

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#### 5260 Docketed Protest/Claims Tab

The Docketed Protest/Claim Tab provides information about the case unit when it was in the Docketed Protest/Claim Type. A docketed case unit has been determined to have significant legal issues requiring the Legal department's consideration. You cannot view this tab unless you have proper authorization.

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# 5270 Appeals Tab

The Appeals Tab provides information about the case unit when it was in the Appeals Type. You cannot view this tab unless you have proper authorization.

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# 5280 Litigation Tab

The Litigation Tab provides information about the case unit when it was in the Litigation Type. You cannot view this tab unless you have proper authorization.

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#### 5290 Settlement & Settlement Amounts Tabs

The Settlement and Settlement Amount Tabs provide information about the case unit when it was in the Settlement Type. You cannot view this tab unless you have proper authorization.

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## 5300 PASS TASK PLAN

GTAM 5310 Task Plans for Multiple Entities

GTAM 5320 Baselining

The Task Plan is your strategy to complete an audit, the start and end dates for each task, and the estimated hours per task you expect to incur over the course of the audit. The Task Plan helps you to complete the case in a targeted fashion and within the estimated hours.

You create one Task Plan for each case unit. If a case has more than one case unit, maintain the Task Plan in the Primary Case Unit. All case unit Task Plans associated with one case accumulate to create the Case Task Plan. You must create at least one Task Plan for each case, in the working case unit where actions are documented.

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## 5310 Task Plans for Multiple Entities

If one case has case units comprised of different entities, you must establish a Task Plan for each different entity, since the tasks required at each level may differ. For example, if you are examining one year of a partnership, and are looking at the same year of three of its partners, you have four case units under one case: one partnership and three owners. Establish a Task Plan to show the audit plan for the partnership and the audit plan for each partner if you will complete additional work at the partner level. Also, see GTAM 7400, Creating Workpapers for Multiple Year or Multiple Entity Audits.

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# 5320 Baselining

In general, we expect to complete audits requiring fieldwork within one year. We should complete correspondence (desk) audits within six months. We use baselining to measure *planned* versus *actual* completion dates. It permanently records a task's planned end date. The audit supervisor makes the determination to "baseline" a case or task.

Baselining will not prevent you from progressing on the case if you exceed the established date. However, you cannot modify the planned end date once you have established it.

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## 5400 CASE TYPE AND CASE STATUS

GTAM 5410 Case Type GTAM 5420 Case Status

GTAM 5430 Case Units with Different Types

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# 5410 Case Type

A case or case unit type is classified as *Audit*, *Protest*, *Untimely Protest*, *Claim*, *Docketed Protest/Claims*, *Appeals*, *Litigation*, or *Settlement*. Generally, you or Audit Business Support is responsible for updating the case type, depending on unit procedures.

The Protest Desk is responsible for changing the case unit type to Protest or Untimely Protest. If the Protest Desk affirms our position and the taxpayer appeals, the Appeals Desk is responsible for changing the case unit type and status to Appeals.

The Claims Desk is responsible for changing the case unit type to Claims. In addition, if we deny a claims case and the taxpayer appeals, the Appeals Desk is responsible for changing the case unit type and status to Appeals.

## Special Circumstances - Claim v. Audit

- When an audit and a claim for refund are in progress for the same tax year, change the case type to Claim.
- When you have multiple audits and claims for multiple years for the same entity, the *claim* is the mandatory workload. Example:
  - 1. You receive claims for tax years #1 and #2. You manually create case units for these Claims.
  - 2. You subsequently open Audits for the same entity for tax years #3 and #4. Case units are manually created.
  - 3 The primary case unit is the latest year claim.
    - a. You should charge all claim workload time to the primary case unit (latest year claim).
    - b. Charge all audit workload time to the latest year audit case unit (tax year #4).
    - c. Otherwise, charge all of the time to claim case unit since this is a mandatory workload.

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### 5420 Case Status

Within each audit Type, the audit is further distinguished by the Status. As the case progresses, you will update the Status to reflect the current stage. The possible case unit statuses are:

- Closed For any closed case unit.
- Collections For any case unit that is under collection activity.
- **Legal** For any protest case unit transferred to the Legal Division.
- **Legal/Settlement** For any case unit transferred to the Settlement Bureau. **Open** For any appeals case unit not yet closed.
- *Pre-Audit* For a case unit during the pre-audit analysis stage.
- Pre-Audit Review For case units submitted for review before the audit is opened.
- **Release Hold** Returns the case unit to Work In Progress and releases the Suspend/Hold status.
- Review For a case unit submitted for review.
- Survey For a case unit surveyed.
- Suspend/Hold For a case unit that we are temporarily not working (e.g. a bankruptcy case). You cannot use the suspend/hold status within 10 months of the Statute of Limitations.
- **Unopened** For any case unit that is assigned but not yet worked.
- Work In Progress For a case unit we are actively working.

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# 5430 Case Units with Different Types

A case can consist of case units in different types, such as Audit, Protest, and Claim. (See GTAM 16351, *Case Type: Claim v. Audit.*) However, you can only have one type at a time.

A paid protest is treated as a claim and you should treat it as a claim case unit in the PASS Desktop. Complete all information on the Claim General Information Tab, including the Paid Protest Date field. There are different limitation dates, such as the Taxpayer Bill of Rights for claims and protests (GTAM 16300, Claims, and GTAM 16200, Protests), and the Statute of Limitations for an Audit type case (see GTAM 10000, Statute of Limitations).

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### 5500 TEAM AUDITS

You can have two or more auditors working on the case as a team audit. Each team member may work separate tax years, or combine efforts and work each tax year together.

Since the PASS workpapers are viewable online, you may monitor the work done by the other team members. Two or more may view the workpapers at the same time, but only one may write to a given section at one time.

The team lead is the Responsible Owner of the primary case unit and is accountable for the entire audit. Any team member can perform tasks and update case units. You can add team members to any of the case units or to the entire case.

When the case unit is not checked out from the PASS central database, the Responsible Owner and team members can access folders in the workpaper file at the same time. The case unit is viewed as one document. The workpaper file is considered a separate folder with multiple documents.

If a team member tries to open a document that is already open on another workstation, the lead will get a "read-only" copy of the document that you cannot modify. Only one authorized individual can write to a document at a time.

Each team member must record time to the case unit to ensure the accuracy of monthly time reports.

If documenting the audit in each individual case unit, the team lead creates documents in each individual case unit, much in the same way to documenting the audit in the primary case unit. The major difference is that the team lead records the Task Plan and charges time in each individual case unit.

The Responsible Owner can transfer a particular case unit to a specific team member. The team member becomes the Responsible Owner of the case unit and receives a system notification in the Inbox. The new Responsible Owner must create the Task Plan for that case unit as well as charge hours to that case unit. The team member documents the work done on that specific case unit. The team lead is still responsible for the complete case!

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# 6000 RESEARCH

Your desktop provides access to online research. Online research is independent of PASS. Even if you do not have access to the PASS system, you can access online research through the Internet.

In addition to online research, various hard copy tax services are available. The extent of the hard copy services varies by location. We recommend online research as the first research source. Use the hard copy tax services to complement the online research services.

RESEARCH GUIDELINES
RESEARCH & REFERENCE MATERIALS
FEDERAL CITATIONS - COURT CASES, REVENUE
PROCEDURES & RULINGS
CALIFORNIA CITATIONS - COURT CASES, RULINGS, AND
NOTICES
PASS BOTTOM DRAWER

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#### 6100 RESEARCH GUIDELINES

All audit recommendations must conform to established laws and legal interpretations. You should attempt to resolve issues *before* they reach the protest level. Follow the general research guidelines listed below:

- Identify potential issues early in the examination of the returns.
- Gain an overview of the subject and understand the documents/information needed to resolve the issues.
- Examine the schedules attached to the returns.
- Ask the taxpayer or representative questions.
- Write down all information not supported by documents to provide a paper trail and basis for future decisions.
- Follow up on all material you read. List relevant rulings and cases.
- Keep a record of all areas examined, successful or not.
- Learn to skim court cases. Read the head-notes and then read the opinion. The opinion will summarize the facts and reveal if the case is relevant. When you find a case that appears relevant, study the entire case in detail. Do not rely solely upon the head notes and opinion.
- In general, a more current case carries greater weight, since the court presumably considered the previous decisions.
- Check the citator. Have the selected cases been overturned?
- Consider other sources, such as technical manuals.
- Determine how to resolve the issue:
  - Do all of the facts gathered pertain to the issue?
  - What are our alternatives?
  - Do we require additional facts or audit activity?
- Discuss the audit findings with the taxpayer. Review the taxpayer's position and all cases in support of the taxpayer's position.

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#### 6200 RESEARCH & REFERENCE MATERIALS

The following is a list of research and reference material the audit staff can use. This list is not all-inclusive. Some of this material may not be available through the online research services. You may also refer to one of the hard copy tax services.

- 1. **Franchise Tax Board Materials** You can find the materials either online or in each office's library. This information includes:
  - Legal Rulings (citable).
  - Legal Memos (not citable).
  - FTB Notices previously Chief Counsel Letters or Tax Service Letters (citable).
  - Information Letters/Announcements (not citable).
  - Audit Program Reports also called APRs (*not citable*; however, the reasoning of an APR may be used to support an audit position).
  - Audit Branch Procedure Statements also called ABPS (not citable; however, you may use the reasoning of an APR to support an audit position).
  - Chief Counsel Rulings (not citable).

**NOTE**: The above listing constitutes the Compliance Programs, Administration Branch, and Legal Branch's interpretations. The material can be generated internally or initiated by a taxpayer's request.

- Board of Equalization Decisions (citable unless unpublished)
- Superior Court (not citable)
- Court of Appeals, and California Supreme Court decisions (citable)
- California Administrative Code (citable regulations)
- Property Tax Rolls

**NOTE**: Property tax rolls are useful tools for an auditor. Property tax records are maintained on microfiche in Central Office and online research. Field auditors can get the information from the county where the property is located. Information generally available on property tax rolls includes:

- Names of property owners.
- Addresses of all properties owned by the taxpayer statewide or by county.
- Parcel number.
- Purchase date.

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- Purchase price.
- Assessed value of land.
- Assessed value of improvements.
- Homeowner's exemption.
- Land use: single family residence, duplex, condominium, multi-use, commercial, industrial, agricultural, etc.
- Sometimes the year built, square footage, number of rooms.

You can access county property tax rolls three ways:

- Alphabetically name of property owner.
- Situs street address.
- Parcel number.

You can only access statewide property tax rolls alphabetically.

- 2. **Internal Revenue Service Materials NOTE**: The IRS is bound by rulings. However, the *rulings do not have the same authority as regulations*. The Internal Revenue Service has four interpretative announcements:
  - Revenue Rulings. These are official interpretations of facts and how
    the law applies to those facts. Rulings are citable if the facts are the
    same. However, if the facts are not the same, you may apply the
    reasoning behind the ruling. You can find rulings through online
    research and within each office's library.
  - Revenue Procedures. These are administrative practices followed by the IRS, such as the procedure used in changing accounting method. They carry the same weight as Revenue Rulings and are citable. You can find Revenue Procedures through online research and within each office's library.
  - Technical Information Release. These releases are not published but can be found within many tax services. Technical Information Releases are usually after-the-fact rulings requested by the technical staff. They are not citable; however, you may apply the reasoning behind the Release. You can find Technical Information Releases in each office's library.
  - Letter Rulings and Technical Advice Memoranda. These are
    responses to formal requests by taxpayers, regarding specific tax
    consequences, before a transaction occurs or before filing a return.
    You can find Letter Rulings through online research and within each
    office's library. You can find Technical Advice Memoranda in each
    office's library, within the Internal Revenue Bulletins. Letter Rulings

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and Technical Advice Memoranda are *not citable*; however, you may apply the reasoning behind them.

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3. **Federal Court Cases** - The federal court system is divided into three levels:

# Lowest Level (carries the least weight):

- Tax Court (national court)
- District Court
- U.S. Claims Court, formerly Court of Claims (national court)

All decisions can be appealed to the next level.

#### Middle Level:

- Court of Appeals
- Court of Appeals for Federal Circuit (hears appeals only from the U.S. Claims Court)

All decisions can be appealed to the Supreme Court if there is a constitutional issue involved.

# **Highest Level (carries the most weight):**

Supreme Court

Final appeals may be granted when there is a conflict between two or more circuit court of appeals. That a higher court denies a hearing does not necessarily mean that it agrees with the lower court's decision.

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# 6300 FEDERAL CITATIONS - COURT CASES, REVENUE PROCEDURES & RULINGS

The following shows the appropriate citation for Tax Court Cases, Tax Court Memorandum Decisions, District Court Cases, Court of Appeals Cases, Court of Appeals Cases for the Federal Circuit, Supreme Court Cases, Revenue Rulings, and Revenue Procedures:

**Tax Court Cases** - Only the U.S. Government Printing Office publishes Tax Court cases. Cite as,

Name, Volume Number, TC, Page and Year.

For example: Gator Oil Co. 66 TC 145 (1976). If not yet in bound form, use the decision number instead of the page number. For Board of Tax Appeals, use "BTA" in place of "TC." If the Internal Revenue Service loses a Tax Court regular decision, it will publish an "Action on Decision" in the Internal Revenue Bulletins, in which they acquiesce (agree to) or do not acquiesce to the court's decision.

**Tax Court Memorandum Decisions** - The U.S. Government Printing Office does not officially publish Tax Court Memorandum Decisions. They are currently published by Commerce Clearing House (CCH), and were published by Prentice-Hall (P-H). They frequently involve factual matters, rather than law precedent, and are less authoritative than regular decisions. CCH Tax Court Memo decisions are cited as:

Name, Volume Number, TCM, Page, TC MEMO, Year, and Decision Number.

For example: *Andrew Crispo Gallery, Inc., 63 TCM 2152, TC Memo. 1992-106.* Decisions published by other services are similarly cited.

District Court, Court of Appeals, Court of Appeals for the Federal Circuit, and Supreme Court Cases - CCH and RIA publish these cases.

The decisions published by CCH are cited as:

Name, Volume, USTC, Paragraph Number, Name of the Court, Affirming or Reversing Prior Decision (if applicable), Volume of Prior Decision,

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USTC or TC or TCM, Paragraph Number, Name of the Lower Court, and Year of Lower Court Decision.

For example: *Tuck, 60-2 USTC, Para. 11968 (CA-9) AFF'd 59-1 USTC Para. 11872 N.D. CAL. (1959)*. This citation tells us that the U.S. Court of Appeals, 9th Circuit, decided the Tuck case in 1960. The Court of Appeals affirmed the 1959 decision of the Northern District Court of California.

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 Decisions published by other services are similarly cited. RIA shows "AFTR" in place of the "USTC."

# **Revenue Rulings**

- In bound form, cite as follows: *REV.RUL. 82-11 1982-1 CB 51*. This cite tells us that the eleventh ruling of 1982 can be found in the 1982 Cumulative Bulletin, volume one, at page 51.
- In unbound form, cite as follows: REV.RUL. 82011 1982 2 IRB 7. This cite tells us that the eleventh ruling of 1982 can be found in the second Internal Revenue Bulletin issued in 1982, at page 7.

**Revenue Procedures** are cited the same way as Revenue Rulings, except that REV. PROC. is substituted for REV. RUL.

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# 6400 CALIFORNIA CITATIONS - COURT CASES, RULINGS, AND NOTICES

The following examples show the appropriate citation for California Supreme Court Cases, Court of Appeals Cases, Board of Equalization Cases, Legal Rulings, and FTB Notices.

# California Supreme Court Cases -

- The following abbreviations relate to the publication sources for California Supreme Court cases:
  - Cal. = California Reports
  - Cal. Rptr.= California Reporter
  - P. = Pacific Reporter
  - Cite cases published by CCH as:

# Name, Volume, Publication Source, Series within the Volume, Page, Year.

For example, Barclays Bank International. Ltd. v. Franchise Tax Board, 2 Cal 4th 708 (1992).

Cite cases published by RIA as:

# Name, Year, Volume, Publication Source, Series within the Volume, Page.

For example, *Barclay's Bank International Ltd. v. Franchise Tax Bd.* (1992) 2 Cal. 4th 708.

## Court of Appeals Cases -

- The following abbreviations relate to the publication sources for California Court of Appeals cases:
  - Cal. App. = California Appellate Reports
  - Cal. Rptr. = California Reporter
  - *P.* = Pacific Reporter
  - Decisions published by CCH are cited as:

Name, Volume, Publication Source, Series, Page, Year.

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For example, Tenneco West, Inc. v. Franchise Tax Board, 234 Cal.App.3d 1510, (1991).

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Cite decisions published by RIA as:

Name, Volume, Publication Source, Series, Page, Year.

For example, Tenneco West, Inc. v. Franchise Tax Bd. (1991) 234 Cal.App.3d 1510.

**Board of Equalization Cases** – Cite decisions as, "*Name, Cite, Date.*" For example, *Sunglass Products of California, 1983-SBE-196, September 15, 1983.* Board of Equalization citations may also include a notation such as 83-SBE-196. This notation tells that this is the 196<sup>th</sup> ruling by the State Board of Equalization in 1983.

**Franchise Tax Board Legal Rulings** are cited as follows: **Legal Ruling 98-1** or **FTB LR 98-1.** This citation tells us that this ruling is the first ruling we issued during the year 1998.

**Franchise Tax Board Notices** are cited as follows: *FTB Notice 98-10.* This citation tells us that this notice is the tenth notice we issued during the year 1998.

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# 6500 PASS BOTTOM DRAWER

You may store research material in the Bottom Drawer file. The Bottom Drawer provides the user with a search function, to enable the retrieval of stored research information. *Only the owner can access this file.* 

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# 7000 WORKING A CASE/CASE UNIT

GTAM 7100	WORKPAPERS: THE NEED FOR A COMPLETE
	WORKPAPER FILE
GTAM 7200	PASS EVENT LOG
GTAM 7300	PRIORITIZING WORK
GTAM 7400	CREATING WORKPAPERS FOR MULTIPLE YEAR OR
	MULTIPLE ENTITY AUDITS
GTAM 7420	ADJUSTMENTS AFFECTING FUTURE YEARS
GTAM 7500	SCHEDULES
GTAM 7600	CROSS-REFERENCING
GTAM 7700	TELECOMMUTING
GTAM 7800	OPENING CONFERENCES
GTAM 7900	FIELD APPOINTMENTS

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### 7100 WORKPAPERS: THE NEED FOR A COMPLETE WORKPAPER FILE

GTAM 7110	PASS Workpaper Structure
GTAM 7111	Issue Folders
GTAM 7112	Naming the Issue Folder
GTAM 7113	Contents of the Issue Folder
GTAM 7114	Audit Issue Section
GTAM 7115	Audit File Indexes

The workpapers record permanently that an examination was performed or considered on a taxpayer. A complete workpaper file should include:

- A summary of the work done,
- The audit recommendation, and
- All the supporting documents and schedules.

We need workpapers to support and, if necessary, defend the audit recommendations. We may not be able to sustain audits with recommendations that we do not clearly support with a good workpaper file. If you must supplement the workpapers with verbal explanations, the workpapers are not complete.

The preparation of good workpapers ensures that you:

- Perform all necessary audit steps.
- Get all material facts.
- Do not duplicate information and effort.
- Examine all pertinent supporting documents.
- Fully explain assumptions.
- Ensure that facts and the law support the conclusion.
- Know and document the taxpayer's position.
- Make information in the audit file easy to find.

Keep workpapers current at all times so no one has to redo work. Remember that a second auditor will only have the workpapers to determine what you have done. You should prepare workpapers to defend the audit adequately at the next level, and maintain them within the primary case unit. If you are auditing more than one year of an entity, the primary case unit is the latest return under examination.

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Use a standard workpaper format for all GTA PASS cases (except residency). Two workpapers are required:

- Narrative Report for all change cases, and
- Audit File Index.

See GTAM 13220, Finalize the Narrative Report, and GTAM 7115, Audit File Indexes, for additional information.

# **Narrative Templates**

All change cases require narratives. GTA uses two types of narratives: the Primary Narrative and the Flow-Through Narrative. See GTAM 13220, *Finalize the Narrative Report*, for additional information.

#### **Audit File Indexes**

- Audit File Index The Audit File Index is required. It facilitates the review and comprehension of the documentation and other information in the case.
- GTA (General Tax Audit) Index The GTA Index is optional. Its usage depends upon unit procedures.
- *Documents Index* The Documents Index is a list of documents requested and received from the taxpayer.

See GTAM 7115, Audit File Indexes, for additional information.

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# 7110 PASS Workpaper Structure

To ensure consistency and maintain one GTA structure, the workpaper file on the PASS system is structured in the following folders:

- Administration stores our forms used for procedural purposes such as processing completed cases (e.g., routing information and worksheets for NPA/OA inputs).
- 2. **Reports** stores standard workpapers discussing the case unit as a whole, such as the Narrative Report and Hearing Officer Report.
- 3. Schedules contains all schedules for all issues.
- Preliminary Analysis stores documents developed during the planning stages of the audit, including scope sheets, research templates, and notes.
- 5. **Draft Correspondence** contains correspondence documents that have been created but not sent. All new correspondence documents are created in the Draft Correspondence folder.
- 6. **Sent Correspondence** contains copies of all correspondence documents sent through PASS. Documents in this folder are read-only.
- Received Correspondence contains correspondence documents for all correspondence recorded in the Event Log. This includes copies of any faxes received.
- 8. **Notes** stores additional information about the case or case unit such as the details from the first interview with the taxpayer or representative, public contacts, and ownership information (i.e., Public Contact Memos, research templates, and notes).
- 9. **Audit Support** contains documents created by Audit Business Support staff while processing completed cases.
- 10. *Issue Folders* contains documentation of the facts, law, analysis, conclusion, and determination for each audit issue. You can create issue folders as needed to fit the audit.

Folders #1-9 above ("Administration" through "Audit Support") are "static" folders, which means that these folders are permanently fixed. You cannot change the sequence of these folders. All cases are structured in this order.

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# 7111 Issue Folders

An Issue folder serves as the record of the audit process for each issue under examination. In this folder, you will:

- Describe the audit issue, as reported on the tax return.
- Document research performed.
- Explain documents reviewed.
- Document the analysis of the documents received and the applicable law.

Update the Issue folder continually. You may create as many Issue folders as needed to address the audit issues. Give each audit issue its own Issue folder.

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# 7112 Naming the Issue Folder

The folder's name should adequately identify the issue and the entity, if needed. The Issue folders are listed in the order in which they were identified.

When you are examining multiple years and multiple issues, but one or more issue is specific to one year, include the year within the name of the Issue folder.



- Name the folders.
- Include the year, if appropriate.
- Include the entity, if needed.

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#### 7113 Contents of the Issue Folder

Complete the Audit Issue Section and create any needed schedules or other sections as appropriate (see GTAM 7114, *Audit Issue Section*).

Name the files as you create them. The files are sorted in ascending or descending alphabetical order. *The discussion of facts is always first,* followed by the discussion of verification.

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#### 7114 Audit Issue Section

Use the Audit Issue Section to:

- Summarize the audit of a particular issue.
- Document continually the development of the audit process.
- Explain the books and records reviewed.
- Provide support for the audit recommendation.

The Audit Issue Section form is fixed in PASS. The following sections of the template automatically fill when the workpaper is created:

- <u>Case Unit name and Tax Year</u> (upper left corner).
- Case Unit Identification Number (below case unit name and tax year)
- <u>Taxpayer</u> (case unit name without reference to a specific year).
- Taxpayer ID.
- <u>Created By</u> (the name of the person who created the workpaper file).
- Last Modified Date (date last changes were made to the workpaper).

You complete the remaining sections:

- Income Year(s): The taxable year ending (IYE).
- Issue: The audit issue. This should correlate to the Issue folder.
- Agree or Disagree box.
- <u>Tax Potential</u>: The tax potential at the beginning of the audit for the issue identified.
- <u>Tax Adjusted</u> The actual amount of any tax adjusted at the conclusion of the examination.
- Workpaper Reference: The workpaper reference number.
- Summary Explanation of Item as Reported: Explanation of how the issue was originally reported on the tax return.
  - <u>Facts</u>: Give a clear and concise explanation of the facts and circumstances with enough detail so that a reader unfamiliar with the case can understand the situation as it relates to the audit issue. Differentiate fact from opinion or assertion. Identify clearly any assumptions. Cross-reference your key points to the pertinent documents, schedules, etc., in the audit file. NOTE: Do not include Event Log items such as, "Called Taxpayer," "Requested Return," etc.

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<u>Law</u>: Cite (do not analyze) the applicable law sections (i.e. code, regulations, case law, and rulings). Do not analyze how the law applies. Simply list the applicable law. Show the how in the Analysis section.

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- Analysis: Show how the law sections apply to the facts in your particular case. Explain why the taxpayer does or does not meet the requirements of the law. Include a discussion of applicable case law, regulations, Legal Rulings, and Revenue Rulings to support your position. Discuss your recommendation. Include a copy of research material as needed in the audit file. Address the law or case cites relied upon by the taxpayer. Explain how they support or rebut the taxpayer's, or our, position.
- <u>Conclusion</u>: The determination based upon the Facts, Law, and Analysis. Discuss the taxpayer or representative's position, and why it does or does not apply.
- <u>Documents Index</u>: List the document requested, the date requested, and when it was received.

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## 7115 Audit File Indexes

The Audit File Index makes it easier to review and understand the documentation and other information in the case. Complete only one Audit File Index per audit.

The Audit File Index provides cross-referencing between the PASS electronic files and associated paper files of an audit package. In addition, the Index identifies the tax years under audit, the Statute of Limitations for each year, and helps subsequent users identify the location of the:

- Indexes, where applicable;
- Critical documents, where applicable; and
- Case units with the flow-through workpapers for each taxpayer.

Guidelines for completing the Audit File Index are:

- List the Issue Folders pertaining to the adjustments of the case (Primary or Flow-Through Issue Folders).
- Differentiate between required items and those discretionary or subject to unit procedures (see the chart below). Include those discretionary items pertinent and critical for understanding the conclusion. See the example below.
- Add the workpaper cross-reference in the "W/P X-Ref" column. Those items in the physical file will have a cross-reference. For information on cross-referencing, see GTAM 7600, Cross-Referencing.
- Do not print documents listed on the Audit File Index, or the index itself, unless required by unit procedures.

**Below is an example of an Audit File Index** with required and discretionary items. An asterisk (\*) denotes required items. This list is not all-inclusive, but *suggest*s how the form may be completed.

Taxpayer:			
TPID:		Created By:	Joe Auditor
#	FOLDER	PASS Document	W/P X –REF
1.	Administration		
*	Audit File Index	1	
	6430 – Audit Report	2	
	6430 – Audit Report – Partner	1	

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	·		
	#1 1997		
	PAWS Worksheet Partner #1 1995	1	
	PAWS Worksheet Partner #1 1997	2	
2.	Reports		
*	Narrative Report –	1	
*	Flow-Through Narrative Report Partner #1 1997		
	Exhibits Partner #1 1997 Position Letter	6	
	Exhibit Partner #1 1997 Rebuttal Letter		7-200
3.	Schedules		
	COD Income	1	
	Partner #1 – 1995 Solvency and Assets Schedule		
	Partner #1 – 1995 Tax Computation – See partner Position letter - Sent correspondence Folder	12	
<u> </u>			
4.	Preliminary Analysis		
5.	Draft Correspondence		
	Closing Letter For Claims	1	
6.	Sent Correspondence		
	Initial contact		
*	Position letter #1		
*	Position letter # 2		
	Partner #1 1995 Initial contact		

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7.	Received Correspondence		
<u> </u>	Correspondence Received Index		
	(see unit procedures)		
	Information Received Index (see		
	unit procedures)		
	One of the above is required per		
	unit procedures.		
	IDR Index		
	Documents Examined Index		
	Issue Document Index		
<u> </u>	(correspondence only)		
8.	Notes		
	Public Contact Memos		
	Issue Document Index (hard		
	copy discussed in notes only)		
9.	Audit Support		
10.	ISSUE – COD Income		
*	Audit Issue Section Workpapers	1	
	Schedule	4	
	Document Index	2	
10.	ISSUE – Partner #1 1997 Insolvency		
*	Audit Issue Section Workpapers	1	
	Spreadsheet schedule	2	
	Document Index	3	
15.	ISSUE – Partner #1 1996 Bad Debts		
*	Audit Issue Section Workpapers	1	
	Spreadsheet schedule	3	
	Document Index	2	

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# **Optional Index Templates**

The GTA Index (FTB Form 6869b) is optional and unit procedures determine its use.

The GTA Index is a generic index with many possible uses, such as:

- Information Received in place of the PASS-generated Received Correspondence Template. This index may include documentation obtained from the taxpayer, on-line information, property tax rolls information, third party source documents, etc., in date order. Each item received is listed as soon as it is received and assigned a cross-reference.
- Documents Examined as a listing of documents examined at the audit site and not copied. Individual pages may have been copied and listed elsewhere; for example, the Cash Disbursement Journal with 200 pages, of which a single page was copied for audit purposes. It confirms that you examined the journal but only copied a sample or did not need to make copies.
- Issue Document Index as an extraction from the Information Received Index. This index would list only the documents pertaining to the issue in question. For example, within Issue Folder 10 – COD Income, this index will list only documents pertaining to COD income. This index is designed so that relevant items from the Information Received Index can be copied and pasted directly into this template.

## **GTA - INDEX**

Taxpay	Taxpayer:				
TPID:	TPID:		Created By:		
Date	Sender/Se Provid		Description	Pass Doc ID #	W/P X-Ref

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### 7200 PASS EVENT LOG

The Event Log serves as a detailed log of all actions taken or recorded in PASS. It is important to record all actions. Review, Protest, Legal department, etc., will rely upon information recorded in the Event Log. The PASS system automatically records some events.

Record the following events in the Event Log:

- Change Status.
- Received Correspondence.
- Record Event.
- Record Progress.
- Record Public Contact, including:
  - Phone Calls.
  - Field Visits.
  - Field Office Visits.
- · Request Review.
- Send Correspondence.
- Transfer.

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## 7300 PRIORITIZING WORK

You are responsible for tracking all assigned cases, and choosing the order in which to work them. When prioritizing work, consider the following:

- Statute of Limitations expiration date. You must submit all cases to review at least six months before the expiration of the statute. See GTAM 10000, Statute of Limitations.
- Requests for early statutes (CA Revenue & Taxation Code section 19517 Estates & Trusts). See GTAM 20310.3, Short Statute Requests Estates and Trusts.
- Collection of tax in jeopardy. See GTAM 13240.3, *Jeopardy Assessments*.
- Claims for Refund. See GTAM 16300, Claims.
- Backlog Cases. See GTAM 7310, Receiving Reassigned Cases.
- **Tax Clearances** (to permit dissolution on corporation cases). See GTAM 20210, *Tax Clearance Certificate of*.
- Post Dissolution Audits. See GTAM 20220, Post Dissolution.

In general, Statute of Limitations cases are first priority, followed by claims. Priorities may change due to workload constraints, staffing, etc.

This list is merely a guide. Exercise judgment in each case.

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# 7310 Receiving Reassigned Cases

When you receive a case from a prior auditor, you must retain the prior auditor's workpapers! If you receive a reassigned case and do not agree with the prior workpapers, you should rename the issue file. Do not rename the issue folder.

You may create a new issue file. Name the old issue file and the new issue file appropriately (e.g., "Audit Issue - Prior Auditor" and "Audit Issue - Second Auditor") to keep the previous work without making the completed audit confusing. Write why a new issue file is created both in the Event Log and in the old issue file, and indicate the steps to complete the audit.

If you agree with the original audit position, continue with the prior auditor's workpapers.



- Determine if the prior workpapers are appropriate.
- If yes, continue.
- If no, rename the Audit Issue File within the Audit Issue Folder to "Audit Issue-Prior Auditor"
- Create a new "Audit Issue" file within the Audit Issue Folder.

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# 7400 CREATING WORKPAPERS FOR MULTIPLE YEAR OR MULTIPLE ENTITY AUDITS

GTAM 7410	PASS Workpaper Location
GTAM 7420	ADJUSTMENTS AFFECTING FUTURE YEARS
GTAM 7421	Treatment of Refund Issues
GTAM 7422	Treatment of Refund Issues in Limited Scope Audits

When you examine an audit concerning multiple years or a flow-through entity, , you should complete one set of workpapers and save them in the primary case unit. If you audit more than one year, the *primary case unit* is the latest return under examination.

You or your supervisor decides which case is the primary case unit. You should also decide if there is more than one primary case unit. If there are entity and owner issues, you may select a primary case unit for each.

Record the location of the complete audit file in the Event Log of the non-primary case units. A complete audit file is comprised of the primary case unit and the physical audit file. Include the entity name, year, and Document Locator Number. Refer in the primary case unit's Event Log to all other entities and tax years associated with the case.

PASS is flexible. You may use different organization strategies for different circumstances. For example, you may select a Pass Through Entity for examination, but later decide to limit the examination to an issue only at the shareholder/partner level—for example, shareholder/partner basis. In this situation, you may choose to treat each shareholder/partner as a separate case, especially if you need to close the Pass Through Entity case or case unit.



- Determine which case unit is the primary case unit.
- Save all workpaper information in this case unit.
- Refer, in the non-primary case units, to the location of the complete audit file. Include entity name, year, and Document Locator Number.
- Refer, in the primary case unit, to all other entities and case units associated with the case.

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# 7410 PASS Workpaper Location

# **Entity Audits:**

If the audit issue is an entity level only issue, keep the complete workpaper file in the primary case unit. Refer to the complete workpaper file in any related case units.

Entity flow through Adjustments to Owners:

When examining a flow-through entity, you must consider both the entity and the owners.

 If you conduct the examination at the entity level and adjust the owner level only because of the flow-through, keep the complete entity level workpaper file in the entity's primary case unit and refer to it in the owners' case units.

When performing a partnership audit that results in flow-through adjustments to the individual partners, record the results from the flow-through adjustment in the partnership's Event Log. Refer to the individual partners where the actual adjustment is. Include schedules of adjustment in both the partnership's workpapers and the partners' workpapers.

When performing an S corporation audit that results in flow-through adjustments to the shareholders, enter comments in both the S Corporation and shareholder Event Logs. For the S Corporation, record the results of the adjustment, to both the corporation and the shareholders, in the Event Log.

- 2. If you discover owner-only issues in addition to the entity level issues, establish workpapers as in situation #1 above. Create an additional Issue folder at the owner level.
- 3. If the only issues are at the owner level, complete the workpaper package and attach it to the primary case unit of each owner.

Note the location of the complete workpaper file in each of the other files examined, including the owner files.

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#### 7420 ADJUSTMENTS AFFECTING FUTURE YEARS

If the audit discloses an adjustment that will affect any future year or other taxpayers, such as the disallowance of a bad debt that is deductible in another year, you should request the other returns and make the appropriate adjustments. If tax returns are not yet filed for the years affected, indicate in the position letter how the items are to be treated in the future. Create a reminder in your online calendar for these items. See GTAM 13244, NPACA.

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## 7421 Treatment of Refund Issues

First, scope the return to determine if the tax potential warrants the resources necessary to perform the audit. Since we usually base initial test checks upon limited information, you may later uncover facts that cause a refund rather than the deficiency projected. New issues may also arise that offset the tax from the other pursued issues.

It is *never* acceptable to limit the scope of your audit to exclude issues that are in the taxpayer's favor. Once you open an audit, you must address potential adjustments that are in the taxpayer's favor.

Our goal is to ensure that the correct amount of tax is paid. We cannot limit the scope of an audit to ignore overassessment issues. If we do not consider issues in the taxpayer's favor, then our adjustments will cause the taxpayer to pay more than is fair.

Once we start an audit, and contact the taxpayer, we are obligated to inform the taxpayer if we discover that the audit may result in an overall refund. Explain to the taxpayer what information you will need, and give the taxpayer an opportunity to provide the information. Be sure to include the new issue in the scope of your examination!

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# 7422 Treatment of Refund Issues in Limited Scope Audits

Limited scope audits address situations that may result in additional tax, but of an amount that does not justify the expense of a full audit. Excluding these issues from the scope of the audit is beneficial both for us and for the taxpayer.

It is *never* acceptable to limit the scope of your audit to exclude issues that are in the taxpayer's favor. Once you open an audit, you must address potential adjustments that are in the taxpayer's favor.

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## 7500 SCHEDULES

GTAM 7510 Pro-Forma Tax Return Schedules GTAM 7520 Custom Spreadsheet Schedules

Prepare schedules to show the computations supporting any proposed audit adjustments. Audit schedules should refer to the documents from which the figures were derived, and those documents should refer to the audit schedules where the information is used (see GTAM 7600, *Cross Referencing*).

Sometimes, a figure on an audit schedule will represent a sum from a supporting document. You should include support for that sum in a supplemental schedule on the same page.

A supplemental schedule should show computations and clarify adjustments. Exercise care in its preparation. Remember to:

- Avoid crowding the schedule. Use multiple sheets, if needed, for a clear presentation.
- Clearly label the figures.
- Show how you determined the adjustment amount.
- Identify the source of all figures.
- Use footnotes to clarify items on the schedule.

**NOTE**: If the taxpayer provides schedules, you do not need to restate them.

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### The schedule should include:

• The taxpayer's name in the header.

- The taxpayer's identification number (FEIN, CCN, SSN, etc.) in the header.
- An appropriate title in the header (e.g., Adjustment Schedule, CA Depreciation Schedule, etc.).
- Taxable Years Ending.
- Your name or initials, Payroll Unit Code (PUC), creation date, and schedule number in the upper right corner.
- The name of the source document and date received (lower right corner).
- The name of the individual who provided the document.
- Your additional cross-referencing.
- How you verified the schedule.

NOTE: Do not save a revised schedule file over a schedule file you have previously sent to the taxpayer! Do not delete a schedule from a file! Save it under a new name to retain an audit trail. Note subsequent revisions on the incorrect schedule; for example, "This schedule has been revised and is superseded by schedule XXX."



- Include your payroll unit code, initials, date, and schedule number on all outgoing schedules.
- If providing a revised schedule, write across the bottom of the schedule, "This schedule supersedes the schedule previously provided to you on MM/DD/YYYY."
- Always send a schedule to explain adjustments to the taxpayer.
- When sending the pro-forma tax return schedules, send a spreadsheet "Details of Adjustments" schedule reflecting the taxpayer's net adjustments.
- Never save one schedule over a schedule that you have previously sent to the taxpayer.

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#### 7510 Pro-Forma Tax Return Schedules

Pro-forma tax return schedules are available to complete tax return forms. For example, if you were proposing a Net Operating Loss adjustment, you could complete a new FTB Form 3805V, NOL, in the pro-forma tax return schedule. This schedule would reflect the reportable Net Operating Loss. Pro-forma tax return schedules are a good place to compute tax potential of adjustments.

Pro-forma tax return schedules can:

- Transfer figures from one year to the next.
- Cross-reference figures between schedules, even from one year to the next.
- Itemize figures from a primary schedule in a supporting schedule.
- Color-code figures to identify if a figure is an estimate, overridden, transferred, itemized, a math error, etc.

Pro-forma tax return schedules cannot:

- Transfer figures between case units.
- Cross-reference between case units.
- Link two or more entity schedules.
  - For example, when completing a partnership schedule, first complete the partnership schedules including the Schedule K-1, and then complete the partner schedules beginning with the Schedule K-1 information.).
- Add comments to schedules.
- Be copied and pasted into an Issue folder.

Provide a summary adjustment schedule reflecting an item as reported and as adjusted.

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• To provide this schedule, access the Details of Adjustments spreadsheet template.

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## 7520 Custom Spreadsheet Schedules

PASS contains custom spreadsheet schedules created to allow adjustments to flow through from entity to owners. The entity for which a schedule is created drives the information needed to complete any given schedule. For example, when creating an S Corporation schedule, you need to enter the ownership percentages of the shareholders. The PASS spreadsheet schedules automatically calculate owner level adjustments for a pass-through entity.

## PASS Spreadsheet Schedules can:

- Be copied and pasted into multiple case units' Issue folders.
- Compute flow through adjustments for entity and owners.
- Compute owner-only adjustments with flow through adjustments.
- Allow comments.
- Be customized.

## PASS Spreadsheet Schedules cannot:

• Indicate if a figure is an estimate, itemized, etc., unless the user manually changes the color.

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#### 7600 CROSS-REFERENCING

GTAM 7610 Non-PASS Cross-Referencing

GTAM 7650 Marking on Documents

Number and cross-reference all workpapers to make the review process easier. Cross-referencing helps users easily retrieve information in the audit package.

Since we rarely print workpapers, the physical workpaper file will contain only correspondence and documentation received, and possibly a few items of correspondence sent outside of PASS.

You can view the cross-references online as ordinary word processor footers. In cross-referencing hard copy documents to the on-line file, access the desired file to view the cross-reference.

<u>Print Order</u> <u>Cross Reference</u>

Index

General Information GI - page #

**Team Members** 

Event Log Events – page #

Workpaper File

Reports Reports - documentname - page # **Preliminary Analysis** Prilim - documentname - page # **Notes** Notes - documentname - page # Draft Correspondence Draft Cor - documentname - page # Sent Correspondence Sent Cor - documentname - page # Received Correspondence Received Cor - documentname - page # Schedule - documentname - page # Schedules Admin - documentname - page # Administration Audit Support Aud Sup - documentname - page #

Issue FolderName - document name - page #

Task Plan Task - page #
Address Book Add Book - page #
Notice List Notices - page #

The italics above reflect the names of the document given at the time the document was saved. The page number will also reflect the page number of *that document*, not the page number within the complete folder. For example, a Sent Correspondence folder with four two-page letters will be printed as follows:

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- Sent Cor ICL page 1
- Sent Cor ICL page 2
- Sent Cor IDR #2 page 1
- Sent Cor IDR #2 page 2
- Sent Cor Position Letter page 1
- Sent Cor Position Letter page 2
- Sent Cor Closing Letter page 1
- Sent Cor Closing Letter page 2

For additional information on printing PASS cases, see GTAM 4510, *Transfers to Non PASS Users*.

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## 7610 Non-PASS Cross-Referencing

Cross reference non-PASS cases as you do PASS cases (Index, General Information, Correspondence, etc.). In each section, use the normal cross-reference method (A/1, or 1/1).

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## 7650 Marking on Documents

Do not write on, mark, or highlight any documents received from the taxpayer. The only writing allowed on taxpayer provided documents is:

- Cross-referencing at the bottom of the page.
- Date received by Franchise Tax Board at top of page.
- The word "voluntary" on IRS audit information provided to us by the taxpayer

If you want to make notations to documents:

- Copy the document received from the taxpayer.
- Note on the document that it is a copy.
- Make your notations on the copy.

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#### 7700 TELECOMMUTING

Use the PASS Application to perform all online PASS audit work activities. When telecommuting and working online, PASS auditors must use a PASS laptop. To request a PASS laptop, see GTAM 19000, *Requesting a PASS Laptop*. It is your responsibility to maintain security and confidentiality of all taxpayer information as outlined in the Security and Disclosure procedures (GTAM 3000 – GTAM 3800).

Ask your supervisor about your unit's specific telecommuting procedures.

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## 7800 OPENING CONFERENCES

You may choose to hold an opening conference on a case-by-case basis, or by taxpayer request. Typically, an opening conference discusses:

- Time to complete the audit,
- Scope of the audit,
- · Materiality of the issues examined,
- Documents requested (including possible alternative sources), and
- The information gathered in your pre-audit work.

Your supervisor may attend the opening conference as needed, by taxpayer request.

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#### 7900 FIELD APPOINTMENTS

You can make field appointments by telephone or by letter. Confirm in writing any appointments made by telephone. Appointments and confirmation letters should indicate in broad terms the initial records required for audit and the preliminary scope of the audit.

Use the initial field appointment to become familiar with the taxpayer. You might ask about the taxpayer's line of business, occupation, source of income, or related entities.

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## 8000 PASS CORRESPONDENCE SECTIONS

The PASS correspondence section is divided into three folders:

- Draft Correspondence folder.
- Sent Correspondence folder.
- Received Correspondence folder.

**NOTE**: For a listing of the most frequently asked PASS correspondence questions, refer to the PASS Tips Public Folder, "PASS Correspondence Questions & Answers."

GTAM 8110	STANDARD LETTERS
GTAM 8120	COMPOSING YOUR OWN LETTERS
GTAM 8130	ADDRESSING LETTERS
GTAM 8140	CHOOSING ATTACHMENTS
GTAM 8150	TICKLERS
GTAM 8160	NOTES
GTAM 8170	ADDRESS BOOK
GTAM 8180	REVIEW OF DRAFT CORRESPONDENCE
GTAM 8200	SENT CORRESPONDENCE FOLDER
GTAM 8210	ASSIGNING A PRINTER

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#### 8110 STANDARD LETTERS

GTAM 8111 Privacy notice

Use standard letters when making a routine inquiry or request for information to maintain uniformity of style and a clear, concise, and complete letter.

**NOTE**: At no time should a FEIN, CCN, SSN, etc., be visible from a window envelope! Senate Bill 458 (CH 97-685) mandates that any outgoing United States mail, sent by any state agency, cannot display personal information about the recipient on the outside of the envelope. This includes, but is not limited to, the recipient's:

- Taxpayer Identification Number.
- Telephone number.
- Driver's license number.
- · Credit card account number.

To suggest new standard templates for inclusion on the PASS system, contact your PASS Action Representative Team member.

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## 8111 Privacy notice

When requesting information from a taxpayer about a year for which the taxpayer has not filed a California return, include the following sentence at the end of the letter: "For Privacy Act Notice, see form FTB 1131." Include the form with the letter.

If you already opened an examination on the taxpayer, and provided a version of the form FTB 1015 with the initial contact letter, you do not need to send form FTB 1131. See GTAM 9100.

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#### 8120 COMPOSING YOUR OWN LETTERS

GTAM 8121 Personal PASS Paragraphs

When a standard letter or paragraph will not fit a particular situation, write your own letter or paragraph. Maintain uniformity in presentation, and ensure the product is professional.

Our "Plain Language Guide" is available on the Inside Net at

The "Plain Language Guide" provides guidance for writing both internal documents and correspondence with taxpayers and their representatives. Use this guide to compose all correspondence.

As noted in GTAM 8110, *Standard Letters*, Senate Bill 458 (CH 97-685) mandates that any outgoing United States mail, sent by any state agency, *cannot display personal information* about the recipient on the outside of the envelope. Follow these guidelines:

- Use Franchise Tax Board letterhead only for the first page of the letter. Use blank pages for all other pages. Include a header with the recipient's name, the taxpayer's account number, the date, and the page number. You may include the state seal on the non-letterhead pages.
- Type the date three or four lines below the Department's letterhead.
- Include reply directions in the upper right corner, opposite the date, including your Payroll Unit Code and initials.
- Type the recipient's name, company, and address three to four lines below the date field.
- Type the subject line two lines below the recipient's address using the taxpayer's name, the years under audit, and the taxpayer's identifying number. Be sure not to disclose the TPID through the envelope window.
- Begin the body of the letter one to two lines under the subject lines.
- You should state your name, position, telephone number, and fax number three to four lines below the last line of text.

Margins should be:

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- Top: One half (½) inch between top and the header. The text should begin two lines after the header on page two and on subsequent pages.
- Side: One inch on both sides of the text.
- Bottom: No less than one inch.

**NOTE:** ((\* \* \*)) = Indicates confidential and/or proprietary information that has been deleted.

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## 8121 Personal PASS Paragraphs

Each user can create personal PASS paragraphs, and add them to the list of PASS standard paragraphs. For instructions to create your personal paragraphs, please consult PASS Help under the topic, "Paragraphs - Creating a Personal PASS Paragraph."

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## 8130 ADDRESSING LETTERS

GTAM 8131	PIT Letters and Notices
GTAM 8132	Corporation Letters and Notices
GTAM 8133	Copies (cc:) to the Taxpayer
GTAM 8134	Last Known Address
GTAM 8135	Change of Address

When addressing a letter, PASS provides the option to select to whom to direct the letter, and any copies ("cc's") needed. A Letter can be mailed or cc'd to any number of people. When selecting the "*To*" address, each addressee will receive a copy of the letter without reference to any other addressee.

Effective April 26, 2000, the Department must follow postal regulations when sending mail to taxpayers using Commercial Mail Receiving Agencies (CMRA). The U.S. Postal Service refers to these agencies as Private Mail Boxes (PMB). When addressing taxpayers using a CMRA, you must use the PMB identifier along with the number (e.g., PMB 1145). The PMB must be either:

- On its own line, or
- On the same line as the street address. Do not include the address on the line with a name or care of (c/o) name.

The Postal Service will not deliver mail to Commercial Mail Receiving Agencies without a properly placed PMB designation. They will return the mail to the sender stamped, "Undeliverable as Addressed." The CMRA customer cannot use "Suite," "Apt.," "No.," or any other designation.

Enter the PMB number in TI and BETS in the additional address field, or with the street address, not in the apartment number field. For TI purposes, do not use the "#" symbol. It is dropped and the number entered into the apartment field. For BETS purposes, the "#" indicator will become "No." when keyed. Neither is acceptable for delivery to Commercial Mail Receiving Agencies.

Some taxpayers may have previously provided addresses from Commercial Mail Receiving Agencies using the designation "Apt.," "Ste.," or "Suite" and the box number. The Post office will return undelivered any correspondence using a non-conforming CMRA designation. If a taxpayer has provided an updated address to include "#" or "PMB," update the taxpayer's address in the system.

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Remember to update BETS or TI if the system address is not current. (See GTAM 8135)

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#### 8131 PIT Letters and Notices

The taxpayer's name should appear as it does on the face of the tax return. You should not use any titles except for

- Notices to military personnel, mailed to a military installation, or
- A married woman whose full name is unknown. Her name will be shown as, "Mrs. John J. Doe." If her correct name can be found, it should be used; for example, "Mary E. Doe") even if the return is filed as, "Mrs. John J. Doe."

In the case of a name change, such as a return filed by Jane Doe, who is now Jane Smith, show the name as:

#### JANE SMITH, FORMERLY JANE DOE

If an estate is involved, confirm that the Statute of Limitations is still open before mailing the letter. The estate may have requested an estate income tax clearance. Once we have issued this certificate, the Statute of Limitations is closed for issuing notices to the estate. (See GTAM 20310.2)

Form FTB 540, involving decedents, and Form FTB 541, involving estates and trusts, do not often show the correct taxpayer name and address on the face of the return. If not clearly indicated, you can discern whether Form 541 is for an estate or for a trust by examining the return for a check mark indicating whether the return is for an estate or trust and the amount of exemption claimed.

You need to document the steps you take to try to contact the Administrator of the estate.

The following examples show the correct procedures for addressing correspondence involving a decedent, estate, or trust:

#### Name of the Administrator or Executor is *known*.

- If there is a separate return for the decedent: ESTATE OF JOHN DOE (DEC'D) RICHARD ROE, EXECUTOR
- If there is a joint return of the decedent and the surviving spouse:

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Wife Deceased JOHN DOE & ESTATE OF MARY JOE

(DEC'D)

RICHARD ROE, EXECUTOR

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JOHN DOE & ESTATE OF MARY DOE Wife Deceased

Surviving (DEC'D)

husband the JOHN DOE, EXECUTOR

executor

ESTATE OF JOHN DOE (DEC'D) Husband Deceased MARY DOE, EXECUTRIX, AND MARY

Surviving Wife DOF

the Executrix

Husband ESTATE OF JOHN DOE (DEC'D)

RICHARD ROE. EXECUTOR. AND MARY Deceased

DOE

Both Deceased ESTATE OF JOHN DOE (DEC'D) AND THE ESTATE OF MARY DOE (DEC'D)

Common

RICHARD ROE, EXECUTOR Executor

Both Deceased ESTATE OF JOHN DOE (DEC'D)

Different RICHARD ROE. EXECUTOR ESTATE OF MARY DOE (DEC'D) Executors

JANE DOE, EXECUTRIX

If there is a fiduciary return for the estate:

ESTATE OF JOHN DOE RICHARD ROE, EXECUTOR.

If the attorney for the estate is handling its tax affairs, send the notices in the attorney's care. If the attorney's name is unknown, you should send them to the address of the administrator or the executor.

## Name of the Administrator or Executor is not known.

 If there is a separate return for the decedent: ESTATE OF JOHN DOE (DEC'D) C/O SURVIVING SPOUSE

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 If the decedent was not married: ESTATE OF JOHN DOE (DEC'D) LAST KNOWN ADDRESS OR C/O INDIVIDUAL WHO SIGNED RETURN

If there is a joint return of the decedent and the surviving spouse:

<u>Husband</u> ESTATE OF JOHN DOE (DEC'D) AND

Deceased MARY DOE

LAST KNOWN ADDRESS

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<u>Wife</u> JOHN DOE & ESTATE OF MARY DOE

<u>Deceased</u> (DEC'D)

LAST KNOWN ADDRESS

If the taxpayer dies without assets and there is no probate, address the correspondence in the same manner as outlined where the name of the administrator or executor is not known.

If there is an assessment, the inclusion of "Dec'd," in parenthesis, indicates that the assessment is issued against the decedent's return, whereas the absence of "Dec'd" indicates that the assessment is issued against the fiduciary. In the case of a jeopardy assessment, the inclusion of "Dec'd" or the absence of it indicates whether to treat the jeopardy as issued against the decedent—for a year the decedent was alive—or against the decedent's estate.

#### **Trusts**

 Single: JOHN DOE TRUST RICHARD ROE, TRUSTEE ADDRESS OF TRUSTEE

- Multiple (where one granter has created several trusts): JOHN DOE TRUST F/B/O JANE DOE RICHARD ROE, TRUSTEE ADDRESS OF TRUSTEE
- Guardianship (minors, incompetents): JOHN DOE

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RICHARD ROE, GUARDIAN ADDRESS OF GUARDIAN

 Bankrupt: JOHN DOE RICHARD ROE, RECEIVER/TRUSTEE IN BANKRUPTCY ADDRESS OF RECEIVER / TRUSTEE

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## 8132 Corporation Letters and Notices

Use the exact name of the corporation for all corporation letters and notices. In the case of a name change, such as a return filed by ABC Corp., which is now XYZ Corp., show the name as:

## XYZ CORPORATION, FORMERLY ABC CORPORATION

The following examples show how correctly to address correspondence involving a dissolved, withdrawn, inactive, or bankrupt corporation:

 If the corporation has dissolved, withdrawn, or become entirely inactive, and there is a transferee corporation, prepare the letter or notice in the name of the transferee corporation as successor in interest to the transferor corporation. For example:

GREEN CORPORATION, SUCCESSOR IN INTEREST TO BROWN CORPORATION

**NOTE**: Review the taxpayer's BETS account during the preliminary audit analysis. BETS indicates the corporation's status and provides assumer/transferee information. You should also review the corporation's physical folder for any assumer/transferee information.

When preparing a notice, if there are two successors in interest, show only the last two corporations in the address. Note the first corporation in the net income line at the beginning of the notice. For example:

#### ADDRESS:

BLACK CORPORATION SUCCESSOR IN INTEREST TO GREEN CORPORATION

#### **NET INCOME LINE:**

Net income of Brown Corporation No. 5678901 which was succeeded to by Green Corporation - \$100,000.00

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 If an assumption of liability is made by another corporation or by individuals as a means to collect an assessment, show the corporate name as the taxpayer and add the assumer or transferee to the address as assumer or transferee. For example:

White Corporation
GREEN CORPORATION, ASSUMER AND/OR TRANSFEREE

Or:

WHITE CORPORATION JOHN DOE, AND JOHN SMITH, ASSUMERS AND/OR TRANSFEREES

Mail copies to each assumer or transferee as well as to the corporation.

• If you issue a notice to the taxpayer, and you must later issue the notice to an emergent assumer or transferee, you should issue it as shown:

JOHN DOE, AND JOHN SMITH, ASSUMERS/ TRANSFEREES OF ABC CORPORATION.

Here, you must use the wording, "*Previously paid*," instead of, "*Previously assessed*," especially if the taxpayer has not paid all of its self-assessed tax liability. Then, you must create a manual notice.

Mail copies to each transferee or assumer, but not to the taxpayer corporation.

 In the case of refunds, the taxpayer is the original corporation making the overpayment, regardless of subsequent assumers, transferee, successors in interest, etc. For example:

ABC CORPORATION (Taxpayer making overpayment)
C/O XYZ CORPORATION (Successor or assumer)
ADDRESS OF XYZ CORPORATION

Where the amount refunded was originally assessed to the assumer, transferee, successor in interest, etc., that corporation is the taxpayer.

Address a notice referring to a bankrupt corporation in the usual manner.
 If the receiver requests a copy of the notice, it should be so indicated on

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the BETS NPA Worksheet (Form FTB 6830-BCT):

ABC CORPORATION
C/O JOHN DOE, RECEIVER (or referee)

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## 8133 Copies (cc:) to the Taxpayer

Sometimes, you should send copies of letters sent to the taxpayer's representative to the taxpayers. Some situations requiring cc's are:

- Taxpayer request for copies of all letters.
- Follow-up to a request for information to which the representative has not responded to let the taxpayer know that you have not received it.

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#### 8134 Last Known Address

Mailing a notice to the last known address provided by the taxpayer *is adequate notice*, whether or not the taxpayer actually received a forwarded copy of a Notice of Proposed Assessment. An assessment is timely if it is mailed to the taxpayer's last known address before the applicable time limit. As a general rule, a taxpayer's last known address is the one that appears on the taxpayer's most recently filed return, unless the Franchise Tax Board is given clear and concise notice of a different address. (See GTAM 8135) (*Taylor v. Commissioner*, (1990) T.C. Memo. 1990-559; *King v. Commissioner* (9th Cir. 1988) 857 F.2d 676; *Appeal of W. L. Bryant*, Cal. St. Bd. of Equal., August 17, 1983.)

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## 8135 Change of Address

If you receive change of address information from the taxpayer or the United States Postal Service, it is your responsibility to update the address information on either BETS or TI, as well as on the PASS system.

You may also receive change of address information from third parties such as the Employment Development Department, credit bureau reports, and 1099 information. Determine the most correct address, and update the computer systems.

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## 8140 CHOOSING ATTACHMENTS

You may send correspondence previously sent through PASS as an enclosure by "attaching" the documents to your current letter. Open the desired letter before attaching it to be sure that you are sending the correct letter to the correct recipient. If you send an attachment to someone who was not originally a recipient, consider any potential disclosure issues.

Always include the previous letter when sending a follow up letter or a demand letter.

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#### 8150 TICKLERS

GTAM 8151 Updating Ticklers
GTAM 8152 Tickler Status

You can use "ticklers" to remind you to perform basic tasks.

There are two types of ticklers:

- Notification Ticklers trigger a future notification. When the trigger date
  arrives, a notification will be sent to your PASS inbox. The notification will
  include any comments you made when creating the Tickler reminder.
- Document Ticklers remind you to send correspondence. This reminder
  will include the name of the letter template, if selected when the Tickler
  was created. For example, you may create a reminder to send a demand
  letter if a response is not received by June 1, 1999. On June 2, 1999, you
  will receive the reminder telling you to send the demand letter.

Once you have created a tickler, it stays in the Ticklers window until you delete it. You can use ticklers to note the next action on a case unit.

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## 8151 Updating Ticklers

At any time, you may view and edit the list of outstanding Ticklers for one case unit. When you no longer need a Tickler, you should cancel it.

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## 8152 Tickler Status

There are three statuses for ticklers:

- Active
- Completed
- Overdue.

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## **8160 NOTES**

This is a good place to add any additional comments.

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## 8170 ADDRESS BOOK

The Address Book stores the address of the taxpayer and representative. Each case unit has an Address Book. Be sure that all of the information is accurate. Verify the address information at the beginning and end of the examination.

If you update an address on PASS, you must also update the BETS or TI system. The Address Book only updates the address for correspondence generated by PASS.

**NOTE**: To prevent unauthorized disclosure, *do not send email over the Internet.* You may not exchange confidential information with a taxpayer or representative by Internet email under any circumstance. Only authorized employees who have completed the *Internet Service Application* (Form FTB 6614) and have attended Internet training may use the Internet. Attachments sent through the Internet are much more likely to be intercepted during transmission than through regular mail or faxing.

In general, you maintain the Address Book. However, you might need help updating the Address Book for a large audit. If so, you should contact the Audit Business Support administrator.

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## 8180 REVIEW OF DRAFT CORRESPONDENCE

Until satisfied with your experience level, your lead or supervisor reviews all your draft correspondence before mailing. See GTAM 14100, *Informal Review Requests*, for additional information.

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#### 8200 SENT CORRESPONDENCE FOLDER

The Sent Correspondence folder holds Correspondence released and sent through PASS.

When you send correspondence, you should stuff all letters and attachments in the envelope, and place them in the out basket, unless you have made arrangements with Support Staff.

State law forbids sending any item containing personal information through U.S. mail, common carrier, package delivery carrier, or through a courier service; unless that information is in a sealed package and not viewable from the package's exterior. Personal information includes, but is not limited to, social security numbers, telephone numbers, driver license numbers, and credit card account numbers.



- You are responsible for sending out correspondence.
- Print correspondence at your local printer. If printing from an office other than your home office, see GTAM 8210, Assigning a Printer.
- Create a tickler (reminder) to send out a follow-up letter. Once the tickler prompts you, send the follow-up letter. See GTAM 8150, *Ticklers*, for additional information.
- Mail the letter the same day that you print it. NOTE: Be aware of the mail pick up times for your area.

You are responsible for sending out correspondence.

Print correspondence at your local printer. If printing from an office other than your home office, see GTAM 8210, *Assigning a Printer*.

Create a tickler (reminder) to send out a follow-up letter. Once the tickler prompts you, send the follow-up letter. See GTAM 8150, *Ticklers*, for additional information.

Mail the letter the same day that you print it. **NOTE**: Be aware of the mail pick up times for your area.

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## 8210 ASSIGNING A PRINTER

Our workload frequently requires us to perform duties from various field offices. In these instances, you should reassign a printer before sending any print jobs. You must log onto the Network to install a printer.

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# 9000 CORRESPONDENCE (TAXPAYER COMMUNICATION)

PASS does not replace the use of ADCORR. ADCORR is still available. However, PASS auditors now complete letters on PASS instead of the ADCORR system.

INITIAL CONTACT LETTERS
INFORMATION/DOCUMENTS REQUESTS (IDRS)
RESPONDING TO TAXPAYER COMMUNICATION
CONFIRMATION LETTERS
POSITION LETTER/AUDIT ISSUE PRESENTATION SHEET
(EXPLANATION OF ADJUSTMENTS)
NO-CHANGE LETTERS
PUBLIC CONTACT MEMO
FAX USAGE
TAXPAYER ADVOCATE, PUBLIC AFFAIRS, & LEGISLATIVE
SERVICES REFERRALS
ADDRESSES - MOST COMMON FRANCHISE TAX BOARD
ADDRESSES - FTB RETURN MAILING ADDRESSES

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## 9100 INITIAL CONTACT LETTERS

In the initial contact letter, you must communicate to the taxpayer the reason for your correspondence. You must state the taxpayer's return is under examination, and provide specific direction.

The Initial Contact Letter sets the tone of the audit and helps establish a positive working relationship between you and the taxpayer or representative.

Send the following items with the Initial Contact Letter:

## Fed/State Examination Section

Audit, Contact, and Privacy Notices – Form FTB 1015C

# **Residency Program**

 Frequently Asked Questions about your Residency Audit – Form FTB 1015R

## **All Other Sections**

Frequently Asked Questions About your Tax Audit - FTB 1015B.

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# 9200 INFORMATION/DOCUMENTS REQUESTS (IDRS)

GTAM 9210	Third Party Contacts
GTAM 9211	What is a Third Party Contact?
GTAM 9212	Third Party Contacts - Taxpayer Notification
GTAM 9213	Third Party Contacts - Audit Record Keeping Responsibilities

Submit an Information/Document Request as early as possible, and explain to the taxpayer or representative why the information is relevant. Discuss applicable laws, regulations, and department policies with the taxpayer or representative to determine what records will best satisfy the audit goals.

In general, you should send all information requests in writing. When you make an information request in person or over the telephone, send a confirmation letter. Written requests provide a record of communication and help avoid possible misunderstandings. You cannot send a demand letter before requesting the information in writing. In addition, we cannot assess the Failure to Furnish Information Penalty unless we have explained it in a demand letter (see GTAM 20500, *Penalties*, for additional information).

You can make the Information/Document Request in a free-form format, or on Form FTB 6203 (non PASS)/Form FTB PASS 1515. Use the following guidelines:

- Make information requests reasonable and necessary (unavailable from our sources).
- State specifically what information you need.
- If the requested information is unavailable, discuss with the taxpayer or representative reasonable alternative documentation.
- Give the taxpayer or representative a reasonable amount of time to provide the information.
- Follow up to all taxpayer responses within 21 days.

All information/document requests should have:

- A professional appearance.
- The request number.
- The date of the request.
- The taxpayer's name, ID number, and the address of the person receiving the request.
- The subject (e.g., "Examination of ABC Corporation's IYE 06/1999 06/2001 tax returns.").

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- A specific response date (month, day, year).
- Consistent paragraph structure. If you number the questions listed under one heading, then list and number the questions under every heading.
- Explanation of all abbreviations (e.g., Personal Income Tax PIT).
- A description of the request. Identify the item you are questioning as it is shown on the return. State clearly the reason for the request.
- Your name, job title, address, telephone number and fax number.
- A reply section: "In reply refer to: 356:ABC: MS X-XX". The first part is your Payroll Unit Code. The second part is your initials, and the third part is your mailstop. NOTE: For auditors using the ADCORR system, include in the reply section the "HW" designation (e.g., "In reply refer to: 343:HW: ABC: MS X-XX"). The second part is the destination (HW = Held by Writer).

If you do not receive the information by the agreed upon date, you should follow up verbally and in writing.

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# 9210 Third Party Contacts

Effective after April 7, 2000, we must notify respective taxpayers before contacting third parties. This requirement is part of the Taxpayer Bill of Rights Act of 1999, which conforms to federal law. We must notify taxpayers beforehand and give them the opportunity to provide alternative information sources. (SB 94, Ch. 931, Laws 1999; added new CR&TC section 19504.7)

In summary, you must:

- Notify the taxpayer before contacting any third party.
- Give the taxpayer a *reasonable period* to answer the notice before you contact a third party.
- If you plan to contact a third party 12 months after the notice date, you
  must issue another notice.
- Record all third party contacts in the case file.
- Give a record of contacts to the taxpayer upon request. The taxpayer must request the record from the Disclosure Office within 60 days after the 12month period.

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# 9211 What is a Third Party Contact?

California Revenue and Taxation Code section 19504.7, and IRC section 7602 define a third party contact as "any person other than the taxpayer with respect to determination or collection of the tax liability of such taxpayer."

We follow IRS procedures and define a third party contact as one:

- Initiated by our employee.
- Made with a person other than the taxpayer.
- Made with respect to the determination or collection of a specific taxpayer's tax liability.
- Where we reveal the taxpayer's identity to the third party.

Since the language of section 19504.7 does not specifically define third party contacts, here are some examples:

# **Example 1**: Computer Database/Internet/Electronic Research

Getting information from a computer database is not a third party contact that needs prior notification since no "person" is contacted. This includes getting the taxpayer's annual report or magazine articles from online public resources or searching the Internet.

# **Example 2:** Contacts with Government Officials

Contacting another governmental entity is not a contact within the meaning of the statute. This includes getting information through our partnerships with other federal, state, or local governmental agencies; i.e., tape exchange programs with IRS and Secretary of State, or requesting taxpayer specific information from the Employment Development Department or Department of Motor Vehicles.

# **Example 3:** Employees of the Taxpayer

Contacting the taxpayer's employees who are acting in the scope of their employment during normal business hours on the business premises is not a contact requiring prior notification, since the employees are an extension of the taxpayer. Accordingly, asking the payroll clerk from what bank the paychecks are drawn is not a contact. However, asking a janitor about the

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corporate officers is not within the scope of the janitor's employment and is a contact requiring prior notification.

# Example 4: Scoping Activities

Scoping activities including *only* contacts with other governmental entities, getting public information, or using in-house records, need no taxpayer notification.

However, we must notify a taxpayer before contacting *any* third party, regardless of whether the audit is open. If we are gathering information with respect to an identified taxpayer before we have opened an audit in order to determine whether to open an audit, we must notify the taxpayer before we contact any third party.

# **Example 5:** Authorization to Contact Another Party

Contacts authorized by the taxpayer or the taxpayer's representative do not require prior notification to the taxpayer. For example, an interview with a former employee of the taxpayer is a third party contact requiring prior notification unless the taxpayer has authorized us to contact that person. The taxpayer's authorization cannot be "blanket," or general, and should be in writing. If the taxpayer give verbal authorization, we must follow up with a confirmation letter.

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# 9212 Third Party Contacts - Taxpayer Notification

By notifying the taxpayer before contacting a third party, we give the taxpayer the opportunity to volunteer whatever information we seek. (CR&TC section 19504.7) Each notification is effective for contacts made up to 12 months after the notification date. The taxpayer can ask for a list of third party contacts until 60 days after the end of the 12-month period.

Only notify taxpayers of third party contacts if you intend to contact third parties. Do not issue notifications if you do not intend to contact third parties.

Use the following language when you must send notification:

"We may contact third parties to determine or collect your tax liabilities. Subject to privacy laws and your rights as a taxpayer, you may obtain a list of those contacts. For more information, please contact our Disclosure Office, P.O. Box 1468, Sacramento, CA 95812-1468."

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# 9213 Third Party Contacts - Audit Record Keeping Responsibilities

Audit record keeping responsibilities include:

- Documenting the need for a third party contact.
- Documenting that you have properly notified the taxpayer.
- Keeping the needed information in case we need it to prove that the taxpayer's rights are protected.

The following procedures apply to third party contacts:



• When contacting third parties, you must provide the following notice:

"If you believe there may be reprisal from the taxpayer if your identity is released as a source contacted for information, you must advise the Franchise Tax Board and your identity will not be disclosed unless otherwise required by law."

- After contacting a third party, record the following information regarding each contact:
  - Name of the third party contacted. (Agency or entity name will suffice if applicable. If name not known, use position or title; i.e. neighbor, teller.)
  - Date of the contact.
  - Whether good cause exists to conclude that reprisal may occur if the taxpayer is notified.
  - Whether there is good cause that collection may be jeopardized if the taxpayer is notified.
  - Whether the taxpayer authorized the contact.
  - Name, phone number, and unit of the person contacting the third party.

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# **Auditors Using PASS:**

 The Event Log must show that third party notice was given to the taxpayer, the date, and how notified. Keep the letter in the Sent Correspondence folder.

- You must set up a separate Issue Folder to hold all the documentation regarding third party contacts. Document clearly each contact within that folder with the information noted above, including whether there is fear of reprisal.
- If the taxpayer or the taxpayer representative gives you written or verbal authorization to contact a third party, document it clearly in the Issue Folder.
- Establish a tickler to remind you when the 12 months from notification date expires. This will remind you to send another notification to the taxpayer, if you plan to contact third parties after 12 months.

# **Auditors Not Using PASS:**

- Record in the Event Log the date you notified the taxpayer about third party contact notice and how you sent the notice.
- You must set up a separate workpaper file (Program Item) with a copy of the taxpayer notification and all the information explained above for the PASS user.
- Establish a follow up date 12 months after you gave notification. If the case is still open, and you still plan third party contacts, you should provide another notification letter.

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## 9300 RESPONDING TO TAXPAYER COMMUNICATION

GTAM 9310 Follow Up

GTAM 9320 Overnight Mail Service

Respond to a taxpayer's correspondence within 21 days of receipt. Informing a taxpayer you have received the correspondence is not a response. Respond to taxpayer's statements or questions. Acceptable responses also include a telephone call, letter, or field call.

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# 9310 Follow Up

When the information requested is not readily available, you and the taxpayer or representative should agree upon a date when the information will be available. If the information is not provided by that date, you should promptly follow up on the request.

No more than 30 days should pass between contacts with the taxpayer or representative.

Failure to meet deadlines impacts your credibility, the ultimate recommendations, and the timely completion of the audit.

You should prevent inappropriate or unnecessary delays requested by the taxpayer or representative. Generally, you should not delay audit activity because of any of the following pending actions:

- Court decisions on prior years.
- Board of Equalization decisions on prior years.
- Protest decisions on prior years.
- IRS examinations on prior years.
- IRS appeals on prior years.

Keep your supervisor aware of the audit status, particularly when you must follow up continually. *Supplement verbal follow-ups with written confirmation*. If the taxpayer refuses to cooperate, consider using a formal information demand.

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# 9320 Overnight Mail Service



## **Central Office**

The overnight mail service makes two daily pick-ups at Central Office:

- First pick-up at 3:30 Service and Supply needs the parcel by 2:30
- Second pick-up at 4:45 Service and Supply needs the parcel by 4:00 P.M.

The Shipping Desk in the Service and Supply Unit (Bldg. 1, K-17) needs lead time to prepare shipping labels and input them to the overnight mail service system.

## **Field Offices**

Contact Audit Business Support.

You can track parcels shipped by the overnight mail service through the overnight mail service's website. You may also contact the Shipping Desk [\* \* \* \* \* ] in Service and Supply.

The overnight mail service has several drop boxes. Use the Shipping Desk's website to find their nearest drop box. Enter your address, and the search engine will locate the nearest drop box and its pick up times, with a map and directions. If you use a drop box, contact the Shipping Desk to request shipping materials.

NOTE: ((\* \* \*)) = Indicates confidential and/or proprietary information that has been deleted.

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## 9400 CONFIRMATION LETTERS

Always provide a confirmation letter after you have agreed to extend a response date or after verbally requesting documentation. The letter should confirm the date to which you granted the extension or confirm that the taxpayer agreed to provide the documentation.

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# 9500 POSITION LETTER/AUDIT ISSUE PRESENTATION SHEET (EXPLANATION OF ADJUSTMENTS)

GTAM 9510 Suspension of Interest – PIT Cases Only

A position letter, or Audit Issue Presentation Sheet (AIPS), is a written explanation of the reasons for the proposed adjustments.

Generally, a position letter summarizes the issues that you examined, and your position concerning those issues. Prepare an AIPS for each issue that you examine. If you resolve an issue before completing the entire audit, give an AIPS to the taxpayer then.

Before issuing a position letter or AIPS, discuss the audit results with the taxpayer or representative (see GTAM 13100, *Closing Conference*). A position letter or AIPS should:

- Summarize the facts, referring to supporting laws, regulations, and legal interpretations. Present the summary in a succinct, well-organized manner.
- Analyze how the law applies to the issues under examination.
- Make a recommendation/conclusion based upon the facts, law, and analysis.

Enclose a schedule of adjustments detailing the tax effect of all proposed adjustments with the position letter or AIPS. The schedule should reconcile the tax liability as shown on the return with the tax liability shown on the Notice of Proposed Assessment. (GTAM 7500)

Generally, the position letter/AIPS should also have wording like this:

"This is your opportunity to provide any additional information that you would like us to consider regarding the proposed adjustments. If you disagree with these adjustments, provide specific reasons why you disagree. Include appropriate substantiation, citation of applicable law, and case authority. We will review any additional information submitted by [date].

"You must file protests against proposed additional tax in writing, within 60 days of the mailing of the Notice of Proposed Assessment (NPA). The NPA will contain specific instructions on how to file a protest."

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Ideally, the taxpayer or representative sends you a written statement of agreement or disagreement. However, the taxpayer's agreement does not waive protest rights or other administrative rights. You must record the taxpayer's position on the *Audit Report* (Form FTB 6430), and in the Narrative Report. See GTAM 13230, *Complete the Audit Report (Form FTB 6430)*, and see GTAM 13220, *Finalize the Narrative Report*, for additional information.

It is more important that taxpayers agree with the facts than with the *application* of the law.

Sometimes the taxpayer may respond to a position letter or AIPS with statements like "I protest this assessment." This does not constitute a protest of the Notice of Proposed Assessment! You should explain to taxpayers that they cannot file a written protest until after we issue the Notice of Proposed Assessment.

If you receive a protest, forward it immediately to Central Office Audit Business Support (mailstop D-12).

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# 9510 Suspension of Interest - PIT Cases Only

According to the Taxpayer Bill of Rights Act of 1999 (SB 94), if we fail to issue a Notice of Proposed Assessment within a "notification period," we must suspend charging interest on the Assessment from the end of the notification period to 15 days after the notice date. This suspension applies only to PIT taxpayers' returns that were filed on time (including extensions).

The correct amount of interest is calculated automatically on the Notices of Proposed Assessment. However, you must manually compute the interest for a position letter or AIPS. (See GTAM 20650)

# Procedure for tax years ending before October 11, 1999:

Calculate interest up through the response date for our position letter. Provide this amount in the letter, and explain to the taxpayer that paying the amount due in full stops more interest from accruing.

# Procedure for tax years ending after October 10, 1999:

We suspend interest only for returns filed on time (including extensions). We charge interest for the first 18 months from the later of:

- The return's original due date (normally April 15 of the next year) for returns filed before the original due date, or
- The date the original return was filed (no later than October 15, in order to be considered timely).

After the 18-month period, we suspend interest *until 15 days after we issue a Notice of Proposed Assessment.* 

The following example shows how to compute interest when interest suspension applies.

# Example:

#### Facts:

- PIT taxpayer
- 1999 tax year
- Tax return filed June 15, 2000 (timely filed under extension)
- Additional tax per audit, \$100,000

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Position letter dated May 15, 2002.

Compute interest from April 15, 2000 (original due date of the return) to December 15, 2001 (18 months from the date the taxpayer filed the return). Suspend interest from December 16, 2001 until the date we issued the Notice of Proposed Assessment (plus 15 days). Using ADINT, we compute interest from April 15, 2000 until December 15, 2001. Our position letter includes the following information:

Additional tax \$100,000.00 Interest 15,357.82 Additional tax and interest \$115,357.82

Compute interest from April 15, 2000, not from the filed date of the return, June 15, 2000. *Interest accrues on balances due from the original due date of the return, even if the return is filed under extension.* 

IMPORTANT: We should no longer use statements like "If you would like to stop more interest from accruing," etc., because we suspend interest from the end of the 18-month period until we issue our notice.

## Multiple tax years:

If your audit covers tax years ending both before and after October 10, 1999, you should compute interest for the tax years for which we suspend interest as well as years for which we do not. Because interest continues to accrue on tax years ending before October 10, 1999, state that payment will stop more interest from accruing on the earlier tax years.

# **Revenue Agent Reports (RARs)**

We may also suspend interest for assessments based on Revenue Agent Reports. The suspension period for Notices of Proposed Assessment based on federal changes depends on *when* the taxpayer or IRS notifies us of the change.

If we were notified of the IRS change *up to six months after* the final federal determination date, then we suspend interest starting *one year* after the date we were notified.

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If we were notified of the IRS change *more than six months* after the final federal determination date, then we suspend interest starting *two years* after the date we were notified.

Once we issue our Notice of Proposed Assessment, interest begins to accrue again. Whether the taxpayer protests the assessment does not affect interest suspension.

# **Using Adint**

You can use Adint to calculate interest. Be careful to use the correct starting and ending dates. Adint does not use enough information to make the determination if suspension of interest applies.

#### **Amended Returns**

Interest suspension does not apply to self-assessed amounts from either original returns or amended returns. It applies only to the amounts due from a Notice of Proposed Assessment. If the taxpayer files an amended return as a result of our audit, interest will be charged because it is self-assessed, and the taxpayer will not benefit from the suspension of interest provisions.

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## 9600 NO-CHANGE LETTERS

We issue "No-Change" letters on all completed audit years that do not result in an assessment or an over-assessment. Send no-change letters directly to the taxpayer. Send a copy of the letter to the representative if the taxpayer requests it. All Central Office PIT auditors issue their own No-Change letters. Field Office auditors may issue their own PIT No-Change letters or delegate them to Audit Business Support. See GTAM 13246, *No-Change Audits*, for more information.

Field and Central Office auditors issue corporation No-Change letters as long as there are no related case units with adjustments. If there are related case units with other than no-change adjustments, Audit Business Support issues the No-Change letter.

If Audit Business Support will be issuing the letter, leave the letter in the Draft Correspondence folder.

If you, as a field auditor, issue the No-Change letter, make sure to note it on the *Audit Report* - Form FTB 6430. Also record it in the Event Log.

**NOTE**: Check your unit procedures. Should your lead or supervisor review the nochange letter before you issue it?

**NOTE**: If Audit Business Support issues the letter, the *Audit Report* - Form FTB 6430 or Sticky Note must show clearly that we have not yet issued the letter. You must also record it in the Event Log.

For multiple tax year audits, when we are not issuing a Notice of Proposed Assessment on all years under audit, we must inform the taxpayer which years we accepted without any change. You may use either the No-Change letter, or a paragraph in the Notices of Proposed Assessment.

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# 9700 PUBLIC CONTACT MEMO

Document all contact with the taxpayer in a Public Contact Memo, except for correspondence received and sent (which is documented in the Event Log). Examples include:

- Telephone conversations
- Field Office Visits
- Visits at taxpayer's or representative's location

Follow up any conversations with a letter and document the items discussed. If you ask for more documentation or grant an extension to provide information, confirm this in a letter. In the letter, include the date that you or the taxpayer will respond.

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## 9800 FAX USAGE

GTAM 9810 Sending GTAM 9820 Receiving

The PASS Desktop lets you exchange documents between with taxpayers by facsimile (Fax). You can exchange faxes through the PASS Desktop two ways:

- When working on a laptop, you can send faxes.
- When connected to the PASS Desktop network, you can send and receive faxes using the PASS FAX server.

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# 9810 Sending

When connected to the network, you can send faxes through your PASS Laptops and Desktops. When faxing confidential information using the PASS system, follow the Security and Disclosure procedures. Use our standard cover sheet, because it has appropriate disclosure information. State law protects confidential taxpayer information including, but not limited to, social security numbers, telephone numbers, and credit card numbers. When faxing correspondence, use a cover sheet to protect confidential information.

Because information sent over the Internet may be intercepted, do not send faxes over the Internet.

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# 9820 Receiving

We treat faxes received by a unit machine instead of a PC as regular correspondence. Photocopy any faxes printed on thermal fax paper, because it will fade and become illegible. Include the photocopy of the fax with received correspondence. Our Taxpayer Signature and Authentication Policy - FTB Policy, File 9140 addresses the acceptability of faxed documents. This policy gives internal guidance on the level of authentication we need for specific documents, including whether we accept a photocopy or facsimile of a document.

Faxed or photocopied waivers are evidence that a taxpayer agrees to extend the statute of limitations. However, *unless you receive the original document, a faxed copy is not accepted as anything other than evidence of intent* (see GTAM 10200, *Waivers*).

When connected to the network, you can send and receive faxes. You will receive an email message with the received fax attached.

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# 9900 TAXPAYER ADVOCATE, PUBLIC AFFAIRS, & LEGISLATIVE SERVICES REFERRALS

# Taxpayer Advocate Referrals

If any of the following elected public officials or any of their assistants makes direct contact by email, telephone, or written correspondence, tell your supervisor and refer the contact to the Taxpayer Liaison Section of the Taxpayer Advocate Bureau.

- Federal or state legislators or their staff.
- Franchise Tax Board member or their staff.
- · Board of Equalization member or their staff.
- Governor or his staff.

Do the same for letters addressed to or containing "cc's" to any of the above or:

- Gerald H. Goldberg
- Executive Officer
- Chief Executive Officer
- Director
- Taxpayer Advocate Bureau
- Taxpayer Advocate.

The Taxpayers' Bill of Rights established the Taxpayer Rights Advocate to resolve taxpayer complaints. The Taxpayer Liaison Section handles all written correspondence mailed to the Advocate, all contacts from elected public officials, and classified account requests.

Refer immediately any written correspondence with a "cc" to the Taxpayer Advocate to the Advocate Office regardless of the letter's addressee. The Taxpayer Liaison Section will determine if the Taxpayer Advocate Office must resolve the matter.

If taxpayers ask for the Taxpayer Advocate, give them the following address:

Franchise Tax Board - Taxpayer Advocate Mailstop B-20 P.O. Box 157 Rancho Cordova, CA 95741-0157

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Please call the Taxpayer Advocate Bureau if you have any questions about referrals.

# **Public Affairs Referrals**

If taxpayers indicate that they have communicated with elected officials, newspapers, television stations, etc., photocopy the taxpayer's letter and our reply, notify your supervisor, and send a copy of each letter to the Public Affairs Office. This type of case needs priority handling.

You should refer any contacts from a newspaper or other publication to the Public Affairs Office.

# **Legislative Services Bureau Referrals**

If an outside source contacts you about legislation, tell your supervisor and refer the contact immediately to the Legislative Services Bureau. The Bureau ensures that that we present consistency on legislative matters. Occasionally, we ask our staff to testify with bill sponsors at legislative hearings. Our management must approve this participation. The Bureau Director gives final approval.

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## 9910 ADDRESSES - MOST COMMON FRANCHISE TAX BOARD

# Appeals to the California State Board of Equalization:

State Board of Equalization PO Box 942879 Sacramento, CA 94279-0001

# C Corporation Program Manager:

Franchise Tax Board West Covina Field Office, MS L-22 100 N. Barranca St. #600 West Covina, CA 91791-1600

## **Disclosure Office:**

Franchise Tax Board
Disclosure Office
P.O. Box 1468
Sacramento CA 95812-1468

## Federal/State Examination Program:

Franchise Tax Board RAR/VOL Unit Audit Section P.O. Box 1673 Sacramento, CA 95812-1673

# **General Tax Audit Program Director:**

Franchise Tax Board GTA Program Bureau, MS D-751 P.O. Box 1673 Sacramento, CA 95812-1673

# Legal Branch:

Franchise Tax Board Legal Branch P.O. Box 1720 Rancho Cordova, CA 95741-1720

# **Pass Through Entity Program Manager:**

Franchise Tax Board Van Nuys Field Office, MS L-15

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15350 Sherman Way, Ste. 100 Van Nuys, CA 91406-4203

# **PIT Program Manager:**

Franchise Tax Board PIT Program, MS D-761 P.O. Box 1673 Sacramento, CA 95812-1673

#### **Protest Section:**

Franchise Tax Board Protest Section, MS D-12 PO Box 942867-5540 Sacramento, CA 94267-5540

# **Residency Program Manager - Northern California:**

Franchise Tax Board Residency Unit, MS D-72 P.O. Box 1673 Sacramento, CA 95812-1673

# **Residency Program Manager - Southern California:**

Franchise Tax Board Residency Unit, MS L-19 7575 Metropolitan Dr., Suite 201 San Diego, CA 92108-4402

## Settlement Bureau:

Franchise Tax Board Director, Settlement Bureau P.O. Box 3070 Rancho Cordova, CA 95741-3070

## Tax Clearance:

Franchise Tax Board Tax Clearance, MS F-225 P.O. Box 1468 Sacramento, CA 95812-1468

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# Taxpayer Advocate:

Franchise Tax Board Taxpayer Advocate, MS B-20 P.O. Box 157 Rancho Cordova, CA 95741-0157

# **Taxpayer Request for Corporate Return:**

RID Unit MS C-2 Franchise Tax Board P.O. Box 1468 Sacramento, CA 95812-1468

# Taxpayer Request for Individual/Fiduciary Return:

RID Unit MS C-2 Franchise Tax Board P.O. Box 1468 Sacramento, CA 95812-1468

# **Technical Resource Manager:**

Franchise Tax Board GTA Technical Resource Section, MS D-756 P.O. Box 1673 Sacramento, CA 95812-1673

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# 9911 ADDRESSES - FTB RETURN MAILING ADDRESSES

# Individuals:

Return	Refund or No-Pay	Payment with Return	Other Correspondence
Туре	Return		
540, 540A,	Franchise Tax Board	Franchise Tax Board	Franchise Tax Board
540EZ,	PO Box 942840	PO Box 942867	PO Box 942840
540NR,	Sacramento 94240-0000	Sacramento 94267-0001	Sacramento 94240-0040
540X			
Computer	Image Processing	Franchise Tax Board	Tax Forms Development
Prepared	Franchise Tax Board	PO Box 942867	and Distribution Section
Form 540,	PO Box 942840	Sacramento, CA 94267-	Franchise Tax Board
Form 540A	Sacramento, CA 94240-	0001	PO Box 1468
	0009		Sacramento, CA 95812-
			1468

# **Corporations:**

Return	Refund or No-Pay	Payment with Return	Other Correspondence
Type	Return		
100, 100S,	Franchise Tax Board	Franchise Tax Board	Franchise Tax Board
100X	PO Box 942857	PO Box 942857	PO Box 942857
	Sacramento, CA 94257-	Sacramento, CA 94257-	Sacramento, CA 94257-
	0500	0501	0540
109, 199	Franchise Tax Board	Franchise Tax Board	Franchise Tax Board
	PO Box 942857	PO Box 942857	PO Box 942857
	Sacramento, CA 94257-	Sacramento, CA 94257-	Sacramento, CA 94257-
	0700	0701	0540

# **Partnership and Limited Liability Companies:**

Return Type	Refund or No-Pay Return	Payment with Return	Other Correspondence
565,568	Franchise Tax Board	Franchise Tax Board	Franchise Tax Board
	PO Box 942857	PO Box 942857	PO Box 942857
	Sacramento CA 94257-	Sacramento, CA 94257-	Sacramento, CA 94257-
	0600	0601	0040

# **Estates and Trusts:**

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Return Type	Refund or No-Pay Return	Payment with Return	Other Correspondence
541	Franchise Tax Board	Franchise Tax Board	Franchise Tax Board
	PO Box 942840	PO Box 942867	PO Box 942840
	Sacramento, CA 94240-	Sacramento, CA 94267-	Sacramento, CA 94240-
	0000	0001	0040

# **Nonresident Withholding:**

Telephone: Automated Services (916) 845-4900 or 1-888-792-4900

Return Type	Refund or No-Pay Return	Payment with Return	Other Correspondence
592, 592-A	Not Applicable	Franchise Tax Board PO Box 942867 Sacramento, CA 94267- 0001	Nonresident Withholding Section Franchise Tax Board PO Box 651 Sacramento, CA 95812- 0651

# **Miscellaneous Forms and Publications:**

For mailing information, follow instructions for each Miscellaneous Form or Publication.

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# 10000 STATUTE OF LIMITATIONS

The Statute of Limitations is a time limit imposed by law on the right of both the state and taxpayer to increase or decrease the taxpayer's self-assessed taxes. When we create a case unit, PASS automatically calculates a Statute date based upon the external accounting systems. You must review the returns to verify this date.

When verifying the Statute date for the case or case unit, consider whether the taxpayer is a fiscal year end taxpayer. Do not assume the Statute date is March 15 or April 15.

We deem an application, tax return, claim, etc., filed on the date postmarked. If it is mailed after the due date, it is date stamped with the date that it is received by the department. If the statute of limitations expires on a Saturday, Sunday, or holiday, the statute expiration is effectively extended to the next business day. Filing an amended return will not change the Statute date.

When one case involves several case units, with different Statute dates, each case unit's General Information window must show its Statute date.

AB 414 (Chapter 614, Stats. 1999) amends Section 19306, revising the statute of limitations for filing claims or allowing credits or refunds. For years 1992-2000, the Statute for refunds is four years from the original due date of the return, without extensions, or one year from the date of overpayment. This means that the Statute for claiming a refund or issuing a Notice of Proposed Overassessment in these years generally expires earlier than the Statute for issuing a Notice of Proposed Assessment. (The Statute for deficiencies is four years from the date the return was filed.) Under the new law, the refund Statute is generally the same as the deficiency Statute if the tax return is filed on time. The amendments to Section 19306 apply to any taxable years with open Statutes on January 1, 2000 or later.

Plan and perform audits so that reasonable taxpayer effort results in the audit's completion within the normal Statute of Limitations. *Waivers are not an acceptable substitute for a prompt, timely audit.* If the taxpayer's circumstances make it substantially difficult to complete the audit on time, we will generally allow them to extend the time by executing a waiver. For more information, see GTAM 14000, *REVIEW*.

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For all Central Office PASS cases subject to review, you must write the Statute of Limitations date on the notes section of the *Batch Control Worksheet* (Form FTB 6148) in red and circle it.

Here is a brief summary of the general Statute provisions, effective January 1, 2000. Different statutes govern different situations. Please note the difference between statutes for proposed deficiency assessments and for refunds or credits. For details, refer to the listed California Revenue and Taxation Code sections.

## STATUTE OF LIMITATIONS CODE SECTIONS

PIT & CORP	Notice of Proposed Assessment must be issued within:	Notices of Proposed Overpayment, Credit or Claim For Refund filed within:
Normal	The later of four years after original due date or four years after date filed (CR&TC section 19057 CR&TC section 19066)	The later of:  1. Four years from the date the return was filed, but only if the return is filed by the due date or extended due date;  2. Four years from the original due date, without extensions; or  3. One year from the date of overpayment (Sec. 19306, effective January 1, 2000, for any taxable years with open Statutes on that date)

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State Waiver	Period agreed upon (CR&TC section 19067)	Period agreed upon if signed waiver does not bar refund. (CR&TC section 19308 and CR&TC section 19309)
Omission of 25% of gross income	Later of six years after date return filed or original due date (CR&TC section 19058 CR&TC section 19066)	N/A
Federal Waiver signed	Later of normal California statute or six months after Federal waiver expires (CR&TC section 19065)	Later of normal California statute or six months after Federal waiver expires (CR&TC section 19308)
Federal change reported by taxpayer (or State return amended for federal change) within six months of federal determination. See Note below regarding reporting requirements.	Later of normal statute or two years from the date the notice or amended return is filed with the Franchise Tax Board. Applies to Federal adjustments only. (CR&TC section 19059)	Later of two years from the date of final federal determination, or four years from due date of return or one year from overpayment. (CR&TC section 19311)
Federal Change reported by taxpayer (or State return amended for federal change) more than six months after the final federal determination. See Note below regarding	Four years after the date the taxpayer notifies us. Applicable for Federal adjustments only. (CR&TC section 18622, CR&TC section 19060)	Later of two years from the date of final federal determination, or four years from due date of return or one year from overpayment. (CR&TC section 19311)

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reporting requirements.		
Federal change not reported, or amended State return for federal change not filed	Any time; Statute of limitations is suspended. (CR&TC section 19060)	Later of two years from the date of final federal determination, or four years from due date of return or one year from overpayment. (CR&TC section 19311)
Bankruptcy	Running of statute suspended up to two years. (CR&TC section 19089)	Four years after due date, without regard to any extension of time for filing return. (CR&TC section 18526)
Joint return after filing separate returns	One year, in addition to time period under CR&TC sections 19057-19067, after joint return filed. (CR&TC section 18529)	
Request fiduciary (See LR 082)	18 months after written request to invoke provisions of CR&TC section 19517 made subsequent to or concurrently.	N/A
Substantially Disproportionate Redemptions	One year after notice by taxpayer of reacquisition of stock. (CR&TC section 17322)	N/A
Fraud; or no return filed	No statute of limitations. May assess at any time. (CR&TC section 19057)	The later of:  1. Four years from the date the return was filed, but only if the return is filed on time by the due date or extended due date;  2. Four years from the original due date, without extensions; or  3. One year from the date of overpayment. (CR&TC section 19306, effective

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		January 1, 2000; applicable to any taxable years with open Statutes on that date)
Unreported installment income (Corp.)	Four years after taxpayer ceases to be subject to tax (CR&TC section 24672 - Corp.)	N/A
TRANSFEREE (a) Original Transferee – CORP	One year beyond the normal statute of limitations (CR&TC section 19074)	N/A (b) Transferee of a Transferee
(b) Transferee of a Transferee – CORP	One year after the expiration of the period of limitation of the preceding transfer. For exceptions see CR&TC section 19074(b), (c), & (d).	N/A

GTAM 10100 SPECIAL STATUTES

GTAM 10200 WAIVERS

GTAM 10300 STATUTE OF LIMITATIONS / TIME LIMITS - GTATRS

**REVIEW** 

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## **10100 SPECIAL STATUTES**

GTAM 10105 Financial Disability
GTAM 10110 Offset of Barred Refund
GTAM 10120 Erroneous Refunds

If the normal four-year Statute is open when a Special Statute becomes effective, the Special Statute will apply. An exception is California Revenue and Taxation Code, section 19517 (request by fiduciary), which supersedes both the normal statute and the statutes relating to federal waivers (CR&TC section 19056) and federal changes. (CR&TC section 19060 & 19059)

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# 10105 Financial Disability

Statute of Limitations is suspended for individual taxpayers for a refund claim during any period that the individual is "financially disabled." This provision applies to both original and amended returns as well as claim for refund correspondence, if the statute of limitations had not expired by September 23, 2002. (CR&TC section 19316)

A taxpayer is considered financially disabled if the individual is unable to manage his or her financial affairs by reason of a medically determinable physical or mental impairment that is either deemed terminal, or is expected to last for a continuous period of not less than 12 months.

An individual taxpayer is not considered financially disabled if, for any period, the individual's spouse or any other person, is legally authorized to act on that individual's behalf in financial matters.

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## 10110 Offset of Barred Refund

Although it does not extend the Statute of Limitations for a claim for refund, CR&TC section 19314, allows taxpayers to offset a barred refund against a deficiency from:

- A transfer of items of income, deductions, or both, from one year to another for the same taxpayer.
- A transfer of items of income, deductions, or both, for the same year for a related taxpayer described in CR&TC section 19110.

Taxpayers must file the offset before seven years after the due date of the return on which they find the overpayment.

If taxpayers claim overpayment pursuant to CR&TC section 19314, and the issue in question deals with straddle investments, be aware that *if the straddles entered into are shams, then section 19314 cannot apply* because there was never any item of income to report. In addition, if we disallowed the straddles because transactions were not entered into for profit, then section 19314 *cannot apply* since we consider the closing of each straddle transaction a separate transaction (*Smith v. Commissioner, 78 T.C. 350 (1982)*).

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#### 10120 Erroneous Refunds

Neither California law nor federal law explicitly defines the term *erroneous refund*. However, federal case law interprets the term as any improper payment of government funds (*U.S. v. Green*, 28 F.Supp. 549; *Smyth v. U.S.*, 92 F.2d 900; *Crocker First National Bank of San Francisco v. U.S.*, 137 F.Supp. 573).

We may assess or collect the amount mistakenly made or allowed as a refund, in whole or part, after we issue a notice and demand repayment with a Notice of Proposed Assessment. Under California Revenue and Taxation Code, section 19104, we may bring an action for recovery of an erroneous refund or credit (payment) by the later of:

- Until two years after the refund or credit was made.
- During the period in which we may mail a Notice of Proposed Assessment.

Subdivision (b) of CR&TC section 19104, provides for the abatement (grace period) of interest assessment on certain recoveries of erroneous refunds. The grace period for interest on the erroneous refund can be up to 30 days after the repayment demand (Notice of Proposed Assessment).

**NOTE**: A paid amended referral that is later audited and adjusted is not an erroneous refund. If the case involves multiple issues, such as erroneous refund and non-erroneous refund, issue separate Notices of Proposed Assessment.

See GTAM 13240, Complete Adjustment Forms (NPA, OA), for more information.

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#### **10200 WAIVERS**

GTAM 10210 Corporation Waivers
GTAM 10220 Securing the Waivers
GTAM 10230 Federal Waivers

To extend the statute of limitations expiration date for issuing deficiency assessments or refunds, we must get authorization on the *Waiver Extending Statute of Limitations* (Form FTB 3570) (various forms).

- Form FTB 3570D extends the statute of limitations for an individual taxpayer.
- Form FTB 3570 extends the statute of limitations for a corporate taxpayer.
- Form FTB 3570C extends the statute of limitations when federal adjustments are reported.

We can accept only original waivers. We accept a facsimile (fax) or photocopy of a signed waiver temporarily only if the original document is subsequently provided. You may proceed with an examination if you receive a facsimile or photocopy of a signed waiver before the original statute of limitations expires.

You must try to get a waiver signed if the statute expires within six months! Consider how much time we need to complete the case. When requesting a waiver, decide if we need waivers for any other years involved.

We must record that we have notified taxpayers that they have the right to refuse to sign the waiver and to limit the extension period. Our current waiver forms include this notification. If information regarding taxpayer rights is not on the waiver form, record in the case file the date we informed the taxpayer either verbally or in writing, before each request.

The waiver should include:

- Your phone number.
- Reply instructions.
- Taxpayer's name according to the return. Include any transferee or DBA (Doing Business As), if appropriate.
- Account number.
- Tax years to which the waiver applies. Be specific. If the waiver covers a fiscal year taxpayer, indicate "IYE MM/DD/YYYY."
- Extended statute date.

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Normally, our statute of limitations to issue a deficiency notice on a delinquent return expires four years from the date filed. For refunds, the Statute is the later of four years from the due date of the return, without extensions, or one year from the date of overpayment. As of January 1, 2000, all open refund Statutes are the same as the Statute for deficiencies. The request for a waiver should not state, "... The extension will extend the time for claiming a refund," unless the period for claiming a refund has not yet expired. You should verify the language on the Form FTB 3570.

When you get the waiver, compare the information on it with the information on the waiver originally sent. Consider the following points:

- If the waiver is for a joint personal income tax return, both husband and wife should sign it. We may obtain separate waivers from each spouse. If only one spouse signs a waiver, that waiver is still valid for the spouse that signed, because each spouse is liable for 100% of the liability.
- If one of the spouses is deceased, only the surviving spouse needs to sign, and any NPA will be issued in the surviving spouse's name.
- A duly authorized representative may also execute the waiver through an
  executed *Power of Attorney* that specifically provides that agent with the
  right to extend statutes of limitations. If the representative is listed on the
  Power of Attorney database, and has the authority to extend the statute,
  we do not need another original waiver. See GTAM 12000.
- Verify the original signatures on the waiver by matching them with the signatures on the original tax returns.
- Make sure the waiver is not altered. A waiver that is altered or accompanied by modifications in a cover letter is invalid. If you cannot get an unaltered waiver before the current statute of limitations expires, you should issue notices of proposed assessment to protect the audit from running out of time.
- Confirm that the waiver was signed before the current statute of limitations expired.
- Attach the original completed waiver to the tax return to which it applies.

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# **10210 Corporation Waivers**

A principal officer—president, vice-president, secretary, treasurer, or secretary-treasurer—must sign the waiver, unless the corporation has duly authorized another corporate official through a valid Power of Attorney (Form FTB 3520). A Power of Attorney authorizing signature must accompany waivers signed by a representative. The corporate waiver must state the title of the signer, who must be a *current* officer of the corporation, and be executed on or before the default date that the statute of limitations expires.

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# 10220 Securing the Waivers

Make a copy of the waiver and put it in the Received Correspondence file. Attach the original waiver to the front of its return. Note the location of the original waiver in red pencil on the copy, and provide the return's Document Locator Number.

To attach the waiver, fold it so that the "extended waiver date" shows on top. Staple the waiver to the front of the return below the taxpayer's name and address. The waiver should not cover the face of the return or the entity section of the return.

Note the date that you received the waiver in the Event Log and Received Correspondence Section.



- Determine that the waiver is valid.
- Photocopy the waiver.
- On the copy, write in red pencil the location of the original waiver and the Document Locator Number of the return.
- Put the copy in the Received Correspondence file.
- Attach the original waiver to the return to which it applies. Fold it so that the "Extended Waiver Date" shows at the top.
- Revise the Statute of Limitations.
- Check the "Waiver Indicator" box.
- Record the date that you received the waiver in the Event Log.
- For individual taxpayers, update the TI account.

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#### 10230 Federal Waivers

The Internal Revenue Service has two types of statute of limitations waivers. They are:

- Form 872 provides for specific taxpayers, specific taxable years, and an extended statute date.
- Form 872A provides for an open-ended statute with no specific extension date. The IRS uses this form for cases at the appeal level since it eliminates the need to keep track of extended statute dates.

Get a state waiver even if there is a federal waiver, so that the taxpayer understands that the extension date for state purposes may be different. There must be evidence in the file to substantiate that the statute is open before we can issue notices.

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#### 10300 STATUTE OF LIMITATIONS / TIME LIMITS - GTATRS REVIEW

Completed cases with other than "normal" Statutes of Limitations should have an explanation on the *Narrative Report*, *Audit Report* -Form FTB 6430, and on the *Notice of Proposed Assessment*.

Cases with "non-normal" Statutes of Limitations may be:

- The taxpayer has signed a Statute of Limitations waiver. You should attach the original waiver to the face of the return to which it applies.
- The extension resulted because we received a federal audit report.
- The issue involves the special six-year statute of limitations.

You must submit completed cases to the GTA Technical Resource Section at least six months before the Statute of Limitations expires. They need enough time to review the case fully and to contact the taxpayer with any issues.

If the statute expires fewer than six months after the examination is completed, complete the *RUSH Action Slip* (Form FTB 7011) (see GTAM 13760, *Rush Action Slip*). Circle the Statute date in red, on the Rush tag. Attach this form to the physical file for rush processing. Route the physical file.

Transfer the electronic file to the appropriate Audit Business Support Group Worklist (see GTAM 13700, *Routing the Physical & Electronic Files*). Send an email message to the GTA Technical Resource Section group email to tell Audit Business Support that the statute of limitations is pending and that you have transferred the physical file.

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# 12000 POWER OF ATTORNEY – FORM FTB 3520

We can disclose confidential information only to the taxpayer to whom the information pertains, and to the taxpayer's authorized representative. The taxpayer can designate a representative by executing a Power of Attorney. The Power of Attorney (Form FTB 3520) is the general form for obtaining powers of attorney for individuals, corporations, partnerships, Limited Liability Companies, and others. Subject to revocation, it authorizes the taxpayer's representative to receive confidential tax information and to act on behalf of the taxpayer in tax matters.

If a tax matter concerns a joint return, and taxpayers have requested joint representation, both husband and wife must sign the Power of Attorney. For corporations, a principal officer of the corporation must sign. A principal officer is the president, vice-president, secretary, treasurer, and secretary-treasurer. A tax manager is not necessarily a principal officer, so make sure that the signer has the power to execute the power of attorney.

**NOTE**: Unless the majority shareholder is currently a principal officer of the corporation, that shareholder may *not* execute the Power of Attorney. Nor can an individual who was a principal officer of the corporation for the tax years under examination, but who is no longer a principal officer.

We have revised the Power of Attorney several times. The November 1993 revision has problematic language. In the time limit section, it states: "If no time limit is specified, this Power of Attorney will be effective for one year from the signature date." Side Two of the Power of Attorney gives the taxpayer a place to limit the time the Power of Attorney remains in effect. Generally, if there is no time limit, the Power of Attorney remains in effect until the taxpayer revokes it or until all tax matters stated on the form are finally resolved.

Pay attention to the language and version of Power of Attorney forms in case files. We believe that the problematic language appears only on the November 1993 version and was removed as of the September 1994 revision date. If you find the older version of the form in a file, verify the correct statute date and get another Power of Attorney, if needed.

As of August 1, 1999, we have a centralized Power of Attorney Database and a Power of Attorney Unit to process and store Power of Attorney documents. The POA unit is our primary contact for Power of Attorney documents, and keeps

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paper copies of the documents for an appropriate period. If you receive a Power of Attorney during an examination, send a copy to the POA unit for storage and keep the original in the audit file. Send the information to the POA unit within 24 hours of receipt, to keep the database current.

Send the POA to the POA unit by any of these means:

- Interoffice Mail: Mail Stop C-2
- Fax: \* \* \* \* \* \* \* \* \* \* \* \* \*
- Email (if you receive the POA in your network fax): "POAFX"

If you need a document on file from the POA unit, or have questions about the database, contact them at \* \* \* \* \* \* \*.

**NOTE**: Do not include contact information from the initial contact letter in the Power of Attorney database. Update the Power of Attorney database only with information from Power of Attorney forms.

GTAM 12100	WHEN A POWER OF ATTORNEY IS NOT REQUIRED
GTAM 12200	FACSIMILE AND/OR PHOTOCOPIED POWER OF
	ATTORNEY
GTAM 12300	DEPARTMENTAL POWER OF ATTORNEY PROCESSING
	PROCEDURES

**NOTE:** ((\* \* \*)) = Indicates confidential and/or proprietary information that has been deleted.

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## 12100 WHEN A POWER OF ATTORNEY IS NOT REQUIRED

The taxpayers must have an executed Power of Attorney to authorize their representatives to waive the statute of limitations, receive refunds, or perform any action other than representing them during the audit.

The taxpayers do not need a Power of Attorney if they tell you who to contact for information during an examination. If someone other than the taxpayer completes and returns the initial contact letter, you can infer that the taxpayer provided the initial contact letter to this person.

At the conclusion of your audit, you can send a copy of the notice to the representative and the taxpayer. However, you cannot send the notice only to the representative.

If you have concerns about authority, seek a signed Power of Attorney.

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#### 12200 FACSIMILE AND/OR PHOTOCOPIED POWER OF ATTORNEY

The Department's Taxpayer Signature and Authentication Policy (FTB Policy File 9140, October 1994) gives internal guidance on the level of authentication required on specific documents, including whether we can accept a photocopy or facsimile of a document.

Taxpayer authentication means any method that we can use to verify a taxpayer's identity. Currently, original signature on paper is the most common method. This may change as new technologies develop.

The Power of Attorney (Form FTB 3520) is in Category 1 of the Department's Taxpayer Signature and Authentication Policy. We need original signatures on documents listed in Category 1. However, if there is no reason to suspect that the form has been forged or is otherwise invalid, we can accept a facsimile or photocopied Power of Attorney.

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# 12300 DEPARTMENTAL POWER OF ATTORNEY PROCESSING PROCEDURES

If you receive a Power of Attorney form directly from taxpayers or their representatives, follow the procedures listed below.

IF	AND	THEN
Power of Attorney form is complete.  A complete form must	Form is an acceptable form.  Following are acceptable	Write or stamp the received date on the Power of Attorney.
include all of the following:	forms:	Keep the original in the audit file.
<ul> <li>authorization for use by FTB</li> <li>specific tax years</li> <li>representative acts authorized</li> <li>taxpayer signature.</li> </ul>	<ul> <li>FTB POA Form 3520</li> <li>BOE POA Form 392</li> <li>EDD POA Form DE 48</li> <li>IRS POA Form 2848</li> <li>IRS Form 8821</li> <li>Durable POA</li> <li>Handwritten POA</li> </ul>	Send a copy to the POA unit via:  • Interoffice Mail: Mail Stop C-2 • Fax: ****** • Email: "POAFX"  Note: On the routing slip or faxed cover sheet: indicate your name, phone number, mail-stop, and note that the original is in the audit file.
Power of Attorney form is incomplete.  A Power of Attorney is incomplete if any of the following is missing:  • taxpayer signature  • specific tax years  • representative "Acts Authorized"  • specific FTB Tax Form (540, 100, 100S, 541,		Get the missing information from the taxpayer, or a new Power of Attorney, if necessary.  Once complete:  • Write or stamp the received date on the Power of Attorney.  • Keep the original in the audit file.  • Send a copy to the

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etc), if the taxpayer did not use FTB Form 3520.	POA unit via:  Interoffice Mail: Mail Stop C-2 Fax: (916) 845-0523 or (916) 845-9511 Email: "POAFX"
	Note: On the routing slip or faxed cover sheet: indicate your <i>name</i> , <i>phone number</i> , <i>mail stop</i> , and note that the original is in the audit file.

**NOTE:** ((\* \* \*)) = Indicates confidential and/or proprietary information that has been deleted.

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# 13000 CLOSING A CASE/CASE UNIT

GTAM 13100 GTAM 13200 GTAM 13246 GTAM 13250 GTAM 13260 GTAM 13265 GTAM 13270	CLOSING CONFERENCE CLOSING STEPS NO-CHANGE AUDITS COMPLETE NOTICE WINDOW ASSEMBLE THE PHYSICAL CASE REFERENCE RETURNS VERIFY ADDRESSES, STATUTE, CASE INFORMATION, ETC.
GTAM 13280 GTAM 13290 GTAM 13300 GTAM 13400 GTAM 13500 GTAM 13600 GTAM 13700 GTAM 13800	TRANSFER CASE/CASE UNIT TO NEXT LEVEL DEACTIVATE THE BETS NOTIFICATION FLAG OFFSET CASE PERSONAL INCOME TAX / CORPORATION MIXED FILES REVENUE CODES / WORKLOAD CODES PAYMENTS RECEIVED AT AUDIT ROUTING THE PHYSICAL & ELECTRONIC FILES PRESERVATION OF AUDIT FILES (LIM DATING)

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#### 13100 CLOSING CONFERENCE

Before proposing any audit adjustments, discuss the audit results with the taxpayer or representative. If you and the taxpayer disagree, you can discuss the basis for positions and decide if you need more information. Give taxpayers or representatives the opportunity to submit all facts in support of their position. You must evaluate any new information before making a final determination. Tell the taxpayer or representative about all possible adjustments before you submit the final adjustment schedules for review or release of the Notice of Proposed Assessment.

You should discuss the audit with the taxpayer or representative to make sure it has enough information for audit review staff to evaluate. The review staff may return cases to you if you did not get or make available certain information during the audit. See GTAM 16200, *Protests*, for additional information.

Write a summary of the closing discussion and mail it to the taxpayer and/or representative, seeking agreement to all of the facts. You can use the position letter or Audit Issue Presentation Sheet format. See GTAM 9500, Position Letter/Audit Issue Presentation (Explanation of Adjustments), for additional information.

The position letter, or Audit Issue Presentation Sheet, explains the adjustments and gives the taxpayer/representative an opportunity to agree or disagree with the proposed adjustments.

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# 13200 CLOSING STEPS

GTAM 13210 GTAM 13220 GTAM 13221	Finalize the Workpaper File Finalize the Narrative Report Exhibits
GTAM 13230	Complete the Audit Report - Form FTB 6430
GTAM 13240	Complete Adjustment Forms (Notice of Proposed Assessment or Overassessment)
GTAM 13240.1	PIT Notice of Proposed Assessment
GTAM 13240.2	Corporation Notice of Proposed Assessment
GTAM 13240.3	Jeopardy Assessments
GTAM 13240.4	Notice of Proposed Assessment/Claim Denial on the Same Tax Year
GTAM 13240.5	Mirror Image NPA
GTAM 13241	Rush Notices of Proposed Assessment
GTAM 13242	NPA Circle File
GTAM 13243	Notices of Proposed Assessment - Information Copies to the IRS
GTAM 13244 GTAM 13245	NPACA - Notice of Proposed Adjustment Carry Over Over Assessments

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# 13210 Finalize the Workpaper File

When finalizing the case, review each of the workpaper folders to make sure you have properly recorded all information. Discard items such as Sticky Note reminders. Do not discard any item that may help the review of the case. See GTAM 7100, *Workpapers: The Need for a Complete Workpaper File*, for more information.

Complete and cross-reference all schedules, workpapers, etc. See GTAM 7600, Cross - Referencing, for more information.

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# 13220 Finalize the Narrative Report

The Narrative Report summarizes audit findings and the resulting tax effect. It should focus on the final audit determination, and should point readers to the proper workpapers for further information and analysis. You must write a narrative for all change cases. GTA uses two types of narratives:

- Primary Narrative
- Flow-Through Narrative

# **Primary Narrative**

The Primary Entity is the audit's focus. This entity's audit resulted in an adjustment, either at the entity level or at the flow-through level.

PASS users must write a narrative report when there is an adjustment, regardless of whether the case is subject to review. Non-PASS users must prepare this report when a case is subject to secondary review.

The Primary Narrative should provide:

- Clear audit recommendations.
- A summary of proposed adjustments and their tax effect.
- Other information that helps overall understanding.

Although only a summary discussion is required for the narrative, use your judgment to determine how much detail to use. In some instances, you may need a detailed explanation to clearly convey the final determination.

The narrative report should *cross-reference* the workpapers! Provide a cross-reference to the taxpayer's agreement or disagreement. If you and the taxpayer disagree about the facts at the audit level, you should explain this in the narrative.

While gathering facts is important, you should also come to an agreement with the taxpayer/representative about the facts presented. *Reaching an agreement on the facts is mandatory in all cases*, even if the taxpayer does not agree with the way you applied the law, or has not provided information.

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The narrative report does not replace effective workpapers. You must still keep clear and concise workpapers addressing the facts, law, analysis, and conclusion of all issues.

# Flow-Through Narratives

A "flow-through" entity is an entity that we adjust because of a primary level audit. Each entity with an adjustment must have a flow-through narrative. The flow-through narrative should refer to the primary level audit, as well as adjustments specific to the entity, such as Alternative Minimum Tax, Passive Activity Losses, Itemized Deductions Limitations, etc.

The Flow-Through Narrative should:

- Refer to the primary entity and the location of the complete audit file;
- Summarize proposed adjustments specific to the flow-through entity and their effects; and
- State other information that helps overall understanding.

As with the Primary Narrative, we require only a summary discussion. However, you may need detail to explain an adjustment. This narrative does not replace effective workpapers or the schedules that we require at each entity level. See GTAM 7400, *Creating Workpapers for Multiple Year or Multiple Entity Audits*, for a complete discussion of information required in the shareholder and partner case units.

While gathering facts is important, you must also come to an agreement with the taxpayer/representative on the facts presented. Reaching an agreement on the facts is mandatory in all cases, even if the taxpayer does not agree with the way you applied the law, or has not provided information.

#### PRIMARY NARRATIVE REPORT

Taxpayer:	
Taxpayer ID:	Created By:
Taxable Year(s):	Last Modified Date:

# Taxpayer's Representatives [optional]

Complete this field when you need to highlight information such as a change in representation during the audit, an expired Power of Attorney, etc.

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#### List of related entities, partners, or shareholders

List the entity names and identification numbers (SSN, CCN, FEIN, etc.) that are related and/or impacted by this examination. If you have created a diagram of the relationships instead of a list, provide a cross-reference.

#### Statute of Limitations

Enter the controlling Statute of Limitations.

# Comments [optional]

Type any material information not involving an audited issue; for example, an unaudited material issue, items requested that the taxpayer did not provide, etc.

# **Exhibits** [optional]

Cross reference to critical documents supporting the audit position.

#### **Total Tax Effect**

Complete the box with the requested information.

# **Primary Entity**

Taxable Year	Issues	Income Adj.	Tax Effect	Folder-Doc #
Total		\$	\$	

## **Cumulative Flow-Through Entities (Partners, Shareholders)**

Taxable Year	Issues	Income Adj.	Tax Effect	Folder-Doc #

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Total	\$	\$

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## **Audit Adjustments**

- Issue
- Facts
- Law
- Analysis
- Conclusion

# **Taxpayer Position**

# Rebuttal to taxpayer position

You must summarize all issues adjusted, regardless of any current year tax effect. The summary should address:

- The issue audited.
- The reason for the adjustment.
- Any pertinent documentation.
- The net tax adjustment.
- The location of the complete discussion of this issue.
- Taxpayer Position (including cross-reference).
- Rebuttal to taxpayer position.

#### **Unadjusted Issues**

Required if audited, but brief.

#### **Federal Audit Adjustments**

Required if relevant.

#### FLOW-THROUGH NARRATIVE REPORT

Taxpayer:	
Taxpayer ID:	Created By:
Taxable Year(s):	Last Modified Date:

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## **Taxpayer's Representatives [optional]**

Complete this field when you need to highlight information such as a change in representation during the audit, an expired Power of Attorney, etc.

# **Primary Narrative located in case unit**

Name -

Taxable Year -

Identify the adjusted entity's name and entity number. Also, include the tax year in which the complete audit file may be found.

#### Statute of Limitations

Enter the controlling Statute of Limitations.

## **Comments [optional]**

Provide any material information about the audit, but not involving an audited issue. For example: an unaudited material issue, items requested that that taxpayer did not provide, etc.

#### **Exhibits [optional]**

Cross reference to critical documents supporting the audit position.

#### **Total Tax Effect**

Taxable Year	Issues	Income Adj.	Tax Effect	Folder-Doc #
Total		\$	\$	

# **Audit Adjustments at Entity Level**

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Explain briefly all primary entity level adjustments, if needed, with appropriate cross-references to the audited workpapers.

Also, summarize issues encountered at the owner-level, such as Passive Activity Losses or Net Operating Loss. The summary should address:

- The issue adjusted;
- The reason for the adjustment;
- Any pertinent documentation, including schedules;
- The net tax adjustment;
- The location of the complete discussion of this issue;
- Taxpayer Position (including cross-reference). Required for owner-level issues and if different from audited entity position.
- Rebuttal to taxpayer position. Required for owner-level issues and if different from audited-entity position.

## **Unadjusted Issues**

Required if audited, but brief.

## **Federal Audit Adjustments**

Required if relevant.

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#### 13221 Exhibits

Discuss and refer to exhibits in the Narrative Report. Refer to the source of the exhibits and the applicable audit issue sections. Include closing letters to the representative, the representative's position letters, and subsequent letters of rebuttal as exhibits.

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# 13230 Complete the Audit Report - Form FTB 6430

Complete the Audit Report, Form FTB 6430 for all cases. Place the Audit Report on top of the physical file in order to route the case to Central Office for review and support functions. Complete the report as follows:

- 1. **District Office** Enter your program name: for example, "S-Corp. Program."
- 2. **PUC** PASS automatically populates this field.
- Taxpayer/Entity Identification No./Address PASS automatically populates this section with the taxpayer's full name and identification number.
- EARLIEST STATUTE Enter the <u>earliest</u> date on which a statute will expire for making an assessment or allowing a refund for <u>any</u> of the returns under audit.
  - Related entity If the earliest statute date is for a related entity, enter "RLTD" and the statute date.
  - Early Statute If the statute will expire within six months after the file is submitted for review, circle the statute date in red on the hard copy of the Audit Report.
  - Bankruptcy cases Enter "Bar Date" above the actual date.
  - Claims Enter "Claim for Refund".

#### 5. **Boxes**:

- Claims Check this box if the case includes a formal claim. A
  formal claim is any overassessment NOT generated by an audit.
- Non-Review Enter an "X" if the case does not require GTA Technical Review Section review.
- RAR Pending Check this box if:
  - You are returning a file to Central Office without being examined, after receiving a copy of an RAR
  - You are returning a file to Central Office when a federal audit is in progress.
  - You are examining a case for state only issues independent of the IRS audit. Indicate the status of any federal action in the Special Instructions section (section 10).
- *Taxpayer's Copy* Check this box if the file includes copies of the tax returns, and not the original returns filed with the FTB. Enter the years that the taxpayer's copies were used.
- Bankruptcy Check this only in cases where the period for filing

bankruptcy claims has not expired. The final date for filing the claim should be entered in the Special Instructions section (Section 10). For additional information see GTAM 20100.

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- Protested Check this if the file includes a case where a prior NPA is under protest, and the auditor is recommending action to be taken on that protest. Files with a Docketed protest must be cleared through the Protest Section of the Legal Branch for approval. Do not check this box to indicate that the taxpayer will protest the proposed assessment.
- Taxpayer's Position Choose the appropriate text in this dropdown box:
  - Agreed
  - Disagreed
  - Withheld Decision
- 6. **Taxable Year** This section is generally used for PIT taxpayers. Enter the years examined, starting with the earliest year first.
- 7. **Statute Extended** Enter the SOL date or the extended SOL date for each year under audit. If the statute is extended by a state waiver, enter "SW" and the date. If there is no statute, enter the reason (Ex: fraud, no return filed). If a federal waiver extends the date, enter "FW" and the appropriate date. (The SOL expires the later of 4 years after the return was filed or six months after the expiration of the federal waiver). If the statute has expired on a referenced return, enter a dash.
- 8. **Federal Action** Enter "RAR" if the report is available. Enter "Pend" if the IRS is performing or will perform an audit. Enter "N/A" if there is no IRS action. If federal action is pending on any other year not under examination, make a comment in the Special Instruction section (Section 10).
  - **Def. Or O/A** Enter the deficiency amount of tax and penalty in rounded dollars. Interest is only included if payment has been received. This includes Electronic Fund Transfer (EFT) payments. Write overassessment amounts (including penalties) in brackets. If the claim is allowed in full, write "Claim Allowed" and enter the dollar amount (should match the Form FTB 6638 amount). Write "Claim Revised" for a partial denial, and enter the dollar amount allowed.

In some situations, use the following letters in place of dollar amounts:

- N/C No Change. Do not enter zero (0). Zero is only entered for NPACAs (see GTAM 13244 for additional information). Indicate on the Audit Report what the no change is in reference to:
  - N/C letter

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- N/C claim accepted as filed
- N/C amended return accepted as filed.
- CLAIM DENIED Write "Claim Denied" for a claim denied in full.
   No dollar amount is necessary for routing purposes (the dollar amount will be entered in the Notice Window and will be reflected in the PASS reports).

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- N/A Notice of Action. For when a protested NPA is revised, withdrawn, or affirmed.
- **REF** Referenced Return.
- 9. **Special Instructions -** List all related returns in this section, including name, TPID and tax years. This is important so that the files will be kept together through processing.

This section can also be used to call attention to any special item. If you are including special routing instructions, the "See Remarks" box should be checked (See the instructions for Section 8). If a Pass-through entity is adjusted, list all investors/shareholders being adjusted. The investors/shareholder's individual Audit Reports need only list the partnership. Do not list the other investors/shareholders.

This section should also list any additional enclosures and RARs.

- 10. **Auditor's Name Telephone Number PASS** will automatically populate the auditor's name and telephone number. You must enter the date submitted.
- 11. **Reviewer's Name Telephone Number** The first line reviewer will enter their name, date, and telephone number.

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# 13240 Complete Adjustment Forms (Notice of Proposed Assessment or Overassessment)

Complete Notices of Proposed Assessments using BETS and PAWS. Some field offices complete their own PAWS notices but not their own BETS notices, while other offices do not issue either. Issue notices according to your office procedure. If there are hard copies of these forms, write/stamp the word, "PASS," in purple, on the upper right hand corner.

If Audit Business Support inputs the Notices of Proposed Assessment, you must complete a Notice of Proposed Assessment input worksheet for each tax year that you adjust.

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# 13240.1 PIT Notice of Proposed Assessment

You can find the PAWS Input Worksheet (Form FTB 6831B) on PASS. You must prepare the form within its adjusted case unit. Follow the instructions below when preparing the PAWS Input Worksheet:

- Number of Notices If the case involves multiple notices, indicate the total number of PIT notices, including Notices of Proposed Assessment, Jeopardy Assessments, Overassessments, and Notices of Overassessment.
- 2. **SOL Date** Enter the earliest Statute of Limitations date for all notices (tax years) submitted with the case.
- 3. **DLN** The return Document Locator Number.
- Taxpayer's Name lists the taxpayer's full name as it appears on the notice. Include the spouse's name on joint returns. For more information, see GTAM 8131, PIT Letters/Notices.
- 5. *Tax Year* This section is the four-character tax year.
- 6. **Account Number** This is the primary taxpayer's Social Security Number or Taxpayer Identification Number.
- 7. **Revenue Code** lists the seven-digit revenue code. See GTAM 13500, Revenue Codes / Workload Codes, for more information.
- 8. **CC to Rep** lists the representative's address if sending a copy of the notice to the representative.
- 9. **Profile** This section lists the 11-digit numeric profile code. The first six digits are the model number. If the returns are selected through the ASTRA selection process, the ASTRA Data Sheet and Return In-Lieu show the model number.



If a non-standard write-in paragraph explains the primary audit adjustment, enter the appropriate paragraph number reserved as an ASTRA Indicator.

- 10. **CC to Federal** If sending a copy of the Notice of Proposed Assessment to the IRS, put an "x" in this section.
- 11. **Enclosures** You must provide all schedules to the

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taxpayer/representative before closing the audit. If you send enclosures with the Notice of Proposed Assessment, identify the schedules (e.g., Exhibit A and Exhibit B), and enter their addressees in the "Special Instructions" section. Stagger and staple the enclosures to the back of the PAWS worksheet.

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- 12. **Payment Made** If the taxpayer has made a payment for this notice, enter the amount and the date. Use NPA paragraph \* \* \*. Be sure to include the applicable fill-in entries.
- 13. **Taxable Income** indicates the source and the dollar amount of starting taxable income. Enter the taxable income corresponding to the latest return processed (tax due paid by taxpayer or tax that we refunded). For example, if the taxpayer filed and paid the tax due on an amended return, check the "540X" line and enter the taxable income from the amended return. If the taxpayer filed a claim for refund that we have not refunded, enter the taxable income from the original return and check the 540 line. If we have issued a Notice of Proposed Assessment of Overassessment, enter the taxable income from the latest notice.
- 14. **W/P Reference** This section lists the workpaper source of the proposed adjustment.
- 15. Adjustments describes the adjustments as they appear on the notice. Each description is limited to 34 characters or spaces. Enter the dollar amount of the adjustment to the right of the description. If you propose more than five adjustments, combine the adjustments and enclose a schedule describing the adjustments and the dollar amounts. Check the "Enclosures" line when you have attached descriptive schedules.
- 16. **Revised Taxable Income** This is the starting Taxable Income netted with the proposed adjustments.
- 17. *Filing Status* identifies which filing status to use on this notice. Check "*TR*" or "*EST*" for a trust or an estate return.
- 18. **Dep** lists the number of dependent, blind, or elderly exemptions allowed.
- 19. *Tax From* indicates the method of the tax computation used.
- 20. **Exemptions** If this section is blank, we use the exemptions according to the return. If adjusted at audit, we enter the amount of the revised exemptions. If we revised the exemptions to zero, enter zero.
- 21. **Other Credits** gives the appropriate description and dollar amount for each allowed credit, either "per return" or "as revised." It does not show the difference between the claimed and the adjusted credit. Enter a zero if you have disallowed the credit. Each credit amount must have a credit description. Use a separate line for each credit and, if

necessary, add a schedule. Check the "Enclosures" line if descriptive schedules are attached. If there are adjustments to a 540NR, enter only child/dependent or military credits on the "other credit" line. Use the "special credits" line of the nonresident/part year resident PAWS worksheet for all other credits.

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- 22. **Other taxes** identifies the type of additional tax to be assessed, and the dollar amount.
- 23. **Total Tax** is the total *revised* tax liability.
- 24. **Previously Assessed** identifies the previously assessed tax on the taxable income amount entered on number 13 above.
- 25. **Total Additional Tax** is the total additional tax due to the proposed audit adjustments.
- 26. **Penalties** indicates the type of penalty to be assessed. Enter the percentage and amount. If assessing a penalty other than those listed, enter the penalty type and percentage. If you need to calculate the amount manually, enter the amount. If the taxpayer filed a delinquent return, check only the delinquent line. Enter the percentage and amount on the *additional tax* assessed. The system automatically computes the delinquent filing penalty on the return filed.
- 27. **Paragraphs** lists the Notice of Proposed Assessment paragraphs and is available for any necessary fill-in data. Put the paragraphs in the order in which they appear on the notice. For every item adjusted, you must list a separate paragraph. It is not enough to state, "The revision is based on the schedules provided to the taxpayer's representative by the auditor." You must explain the adjustment on the Notice of Proposed Assessment. If you use free form paragraphs, write in the space provided. If you need more space, attach a separate sheet of paper with additional paragraphs. Indicate that the additional paragraphs are on an attached sheet of paper. Do not check the enclosure line. Enter paragraph 03985 or 03990 if you received payment.
- 28. **Reviewer** The reviewer initials and dates this section.
- 29. Special Instructions includes data such as: addressees for enclosures, if the notice is a zero tax Notice of Proposed Assessment, if the notice is a jeopardy assessment, or other special instructions. If the notice is a zero tax Notice of Proposed Assessment, enter, "Zero Tax NPA" in this section. For more information, see GTAM 13244, NPACA Notice of Proposed Adjustment Carry Over.

**NOTE**: If the notice is a Jeopardy Assessment, you must follow the following special procedures:

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Include a detailed justification for the jeopardy assessment. Refer this
justification to the Supervisor or Program Manager, along with the Notice
of Proposed Assessment worksheet and audit file.

Calculate penalties and interest.

 Include an explanatory paragraph. If the notice includes standard Notice of Proposed Assessment paragraphs, write out the paragraphs for processing by the Jeopardy Assessment Desk. The Jeopardy Assessment Desk does not have access to the standard Notice of Proposed Assessment paragraphs. However, the Jeopardy Assessment Desk does have a number of standard paragraphs. Enter the following in the paragraph section of the Notice of Proposed Assessment worksheet for the standard paragraphs:

ENTER	STANDARD
	JEOPARDY ASSESSMENT PARAGRAPH
Illegal Activity	For any assessment based upon illegal activities
Minimum Tax	For any assessment based upon minimum tax.
BOE	For any assessment based upon information
	provided by the Board of Equalization
EDD	For any assessment based upon information
	provided by the Employment Development
	Department.
Prior Year	For any assessment based upon a prior year
	adjustment
Unreported Income	For any assessment based upon unreported income.

 The General Tax Audit Technical Resource Section review all jeopardy assessments, except those issued by Special Investigations.

See GTAM 13240.3, *Jeopardy Assessments*, for more information.

**NOTE**: If you issue the Notice of Proposed Assessment because of an erroneous refund, enter, "*Erroneous Refund - Please Suppress Interest*," in the Special Instructions section. Use Paragraph 00978. If you can identify the reason for the erroneous refund, compose another paragraph explaining why we previously sent the refund to the taxpayer. See GTAM 10120, *Erroneous Refunds*, for additional information.

NOTE: ((\* \* \*)) = Indicates confidential and/or proprietary information that has been deleted.

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# 13240.2 Corporation Notice of Proposed Assessment

You can find the *Corporation NPA Worksheet* (Form FTB 6830-BCT) on PASS. If you input a Notice of Proposed Assessment in the Business Entities Tax System (BETS), you do not need a Notice of Proposed Assessment Worksheet.

You may also refer to the instructions in the BETS NPA Quick Steps.

If you are not inputting the Notice of Proposed Assessment in BETS, complete *Corporation NPA Worksheet* - Form FTB 6830-BCT to issue the Notice manually. The *Corporation NPA Worksheet* is the worksheet Audit Business Support uses to prepare the *Notice of Proposed Assessment* (Form FTB 5830). The *Corporation NPA Worksheet* is also used to issue over-assessments. For all PASS cases where the NPA Worksheet is created, write/stamp the word, "PASS," in purple, on the upper right corner of the hard copy. Prepare the form within its adjusted case unit.

Carefully complete the NPA worksheet, because the typist prepares the finished notice showing the information exactly as it is on the worksheet.

The instructions below apply to the Corporation NPA Worksheet (Form FTB 6830-BCT):

- 1. Check the appropriate boxes.
  - **NOTICE UNRELATED & NOTICE RELATED** Check the appropriate box when needed.
  - DO NOT MAIL NPA Check this box if additional tax resulting from
    the audit is paid and a Notice of Proposed Assessment should not be
    mailed. If the additional tax is paid in full, we do not need to mail a
    Notice of Proposed Assessment unless the taxpayer requests it (use
    payment paragraph 50699 50702). Sometimes we prepare a
    Corporation NPA Worksheet Form FTB 6830-BCT to clarify an
    adjustment for future reference. When it is not necessary to type a
    notice, write "Do Not Type," across the face of the hard copy
    worksheet.
  - FT & CIT Check the appropriate box to indicate the chapter under which the notice is being issued, franchise tax (FT) or income tax (CIT).
  - AUTHORIZED OFFSET Check if we should offset the notice with a related over-assessment.

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- **O/A & J/A** If issuing an overassessment or jeopardy assessment, check the appropriate box.
- ASSUMER If there is an assumer, check the "ASSUMER" box.
- 2. If a jeopardy assessment is being issued, enter "4951" (i.e., Form FTB 4951) in the "J/A NO." box. The Form FTB 4951 is the form that the Business Transfers Jeopardy Assessment Desk uses to mail the jeopardy assessment. The Corporation NPA Worksheet Form The Business Transfers Jeopardy Assessment Desk uses Form FTB 6830-BCT to prepare the jeopardy assessment.
- 3. **SOL** This section shows when the statute of limitations expires. If the Statute expires within 90 days, use a *RUSH Tag* Form FTB 7011. See GTAM 13760, *Rush Action Slip*, and see GTAM 13241, *Rush Notices of Proposed Assessment*, for more information.
- 4. **NO. of Enc.** This section indicates how many enclosures, such as schedules or letters, to send to the taxpayer. If there are multiple notices, note the number of enclosures only on the notices to which you want the enclosures attached.
- 5. **NO. of Notices** This section indicates the total number of overassessments, and Notices of Proposed Assessment or Overassessment to send to the taxpayer. If there are different types of notices, make a note like, "2 NPA's/1 OA", on each notice.
- 6. **Assumer ID No.** This section is for the assumer's identification number. You can find the assumer ID in BETS.
- 7. **Corp. No.** This section is for the corporation number. The corporation number does not include the prefix classifications, "D," "F", "NQIT," or "NQFT." When there is a corporate assumer and/or transferee, enter the corporation number of the dissolved taxpayer, and create a corporate assumer relationship in BETS under the dissolved taxpayer's account. See the BETS NPA Quick Steps for instruction to create a corporate assumer.
- 8. **Claim No.** If the Notice of Proposed Assessment revises a formal claim, enter the six-digit claim number from the return.
- 9. **ISSUE CODES** The issue code uses the last four digits of the California Revenue and Taxation Code section under which we propose the adjustment. For example, if the issue is Charitable Contributions and Gifts (California Revenue and Taxation Code section 24357), the issue code is 4357. If there is more than one issue code, use the predominate code first. Enter no more than three codes.
- 10. **ISSUE CODES** The issue code uses the last four digits of the California Revenue and Taxation Code section under which we propose the adjustment. For example, if the issue is Charitable Contributions and Gifts (California Revenue and Taxation Code section 24357), the issue code is

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4357. If there is more than one issue code, use the predominate code first. Enter no more than three codes.

- 11. **Txp** This section is for the taxpayer's name and address, as it appears on BETS or the return (whichever is correct). If the address on BETS is incorrect, update it. Do not abbreviate the name, unless the abbreviation is part of the official name.
  - If the taxpayer dissolves, withdraws, or becomes entirely inactive because of reorganization, and a transferee or successor in interest is specified, prepare the notice in the name of the taxpayer and/or transferee as successor in interest to the transferor corporation. Include the taxpayer's corporation number in step 7 above. This ensures that the Notice of Proposed Assessment posts to the taxpayer's account for correct computation of the interest liability.
  - If another corporation or individual assumes liability, add the assumer's name and address to this field as "Assumer" and/or "Transferee." Reflect adjustments on the dissolved corporation's account. For example: White Corporation No. XXXXX1 (Taxpayer), and Green Corporation No. XXXXX2 Assumer and/or Transferee or White Corporation No. XXXXXX1 (Taxpayer), and John Doe, Richard Roe, and John Smith, Assumers and/or Transferees.
  - If a transferee liability is established as a means to collect an
    assessment, enter the transferee corporation's name, number, and
    address, in addition to the taxpayer's. If there are many transferees,
    use only the principal transferees. Mail copies of the notices to each
    transferee as well as to the corporation. Comment on the hard copy
    of the Corporation NPA Worksheet Form FTB 6830-BCT, indicating
    not to type the transferee address in the Notice of Proposed
    Assessment.
- 12. *CC to Rep.* If sending a copy of the notice to the taxpayer's representative, enter the representative's name and address. If the representative's address is not in BETS, add it.
- 13. **Copy To Federal** Check the box if sending a copy of the notice the Internal Revenue Service. Do not send copies for years that are barred by the statute of limitations for federal purposes.
- 14. *INC YR* This section indicates the taxable year period of the notice (e.g., taxable year ending June 30, 1993 would be entered as 06/1993).
- 15. **DLN** This is the Document Locator Number of the return (the ten-digit number below the bar code on the top of the return).
- 16. **Net Inc As Reported** Check this box and enter the net income after state adjustments as reported. If the net income has been previously revised, enter the appropriate phrase, such as, "per amended return," or "per Notice"

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of Proposed Assessment dated..." Enter any alternative starting income that is warranted by the nature of the circumstances or adjustments in "Adjustments."

- 17. Adjustments Describe the adjustment items enough for the taxpayer to easily understand the proposed adjustment. If necessary, you can show computation of the adjustments on attached schedules. NOTE: If the description for the starting income in number 16 above is not appropriate enter the description here.
- 18. Check the appropriate boxes and enter the appropriate amount(s).
- 19. Enter the amount of tax computed in all cases. Check the appropriate box:
  - Tax at \_\_\_\_\_%
  - Total amount for Minimum Tax
  - Prepayment Tax
- 20. Less Tax Credits Check the box for the appropriate credit. Enter the dollar amount for each allowed credit as "per return" or "as revised." Do not enter the difference between the claimed and adjusted credit. Enter a zero if you disallow a credit. If you propose a change to any credits, attach a supplemental schedule showing the revised computation. For credits other than the Manufacturer's Investment Credit, Los Angeles Revitalization Zone, or Research and Development credits, check the "Other" box and enter the name of the credit.
- 21. **Net Tax** Enter the net tax amount if different from total tax.
- 22. **AMT and/or Other Taxes** Enter the total Alternative Minimum Tax, and/or other tax. If other taxes apply, check the box and enter a description of the tax, such as, "Tax on built-in gains." Do not refer to law sections or regulations on this line. If you propose a change, attach a schedule showing the revised computation.
- 23. **Total Tax** Enter the total revised tax amount.
- 24. **Previously Assessed** Check the taxpayer's current account status on BETS for the previously assessed amount. BETS may reveal changes to the taxpayer's original self-assessed amount. Enter the total amount of tax previously assessed, including tax on preference income, Alternative Minimum Tax, and other taxes. You may find the previously assessed amount on the original return, amended return, or previous Notice of Proposed Assessment.
- 25. **Total Additional Tax or Over Assessment** Check the box that applies and enter the total additional tax in the far right column. An over assessment will be entered in brackets < >.
- 26. Penalty If assessing a penalty, enter the penalty description and percentage in the space provided. Use descriptive words, such as "Fraud" or "Accuracy Related" instead of the section of the law concerned.

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Generally, compute the penalty only on the additional tax. Exceptions are:

- There should be a delinquent filing penalty, but the original return was assessed for tax only.
- The Fraud penalty is assessed and there was a previous Notice of Proposed Assessment or amended return.
- The penalty for failure to furnish information applies only to part of the deficiency.
- See GTAM 20500, Penalties, for more information.
- 27. **Total Additional Tax and Penalty** Enter the amount of Total Additional Tax or Over Assessment. If there is an overpayment, enter the amount in brackets. When the taxpayer pays the additional tax during an audit, compute interest to the date of payment. Do not enter an interest figure on this form.
- 28. **PARAGRAPH NUMBER(S)** Enter paragraph numbers, auditor-composed paragraphs, and short computations here. The Notice of Proposed Assessment paragraphs must describe the adjustment details. It is not enough to state "The revision is based on the schedules provided to the taxpayer's representative by the auditor." You must explain the adjustment on the Notice of Proposed Assessment. Enter Notice of Proposed Assessment paragraphs of a general nature, which apply to the Notice of Proposed Assessment as a whole, last. Add special paragraphs for suspended corporations (for example, 54477), and when a payment is already made (for example, 50699 or 50700). Refer to prior notices, amended returns, etc. in the opening paragraphs. Closing paragraphs should refer to payments made and protest procedures.
- 29. **Preparer / Reviewer#1 / Reviewer#2** Enter your name and date. Enter each reviewer's name and date. If the notice is a Jeopardy Assessment, you must follow the following special procedures:
  - Include a detailed justification for the jeopardy assessment. Refer this justification to the Supervisor or Program Manager with the Notice of Proposed Assessment worksheet and audit file.
  - Calculate of penalties and interest.
  - Include an explanatory paragraph. If the notice uses standard Notice
    of Proposed Assessment paragraphs, the Jeopardy Assessment
    Desk must write out the paragraphs for processing. The Jeopardy
    Assessment Desk does not have access to the standard Notice of
    Proposed Assessment paragraphs. However, the Jeopardy
    Assessment Desk does have a number of standard paragraphs.
    Enter the following in the paragraph section of the Notice of Proposed
    Assessment worksheet for the standard Jeopardy Assessment Desk
    paragraphs:

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ENTER STANDARD JA PARAGRAPH

Illegal Activity For any assessment based upon illegal activities.

Minimum Tax For any assessment based upon minimum tax.

BOE For any assessment based upon information provided

by the Board of Equalization.

<u>EDD</u> For any assessment based upon information provided

by the Employment Development Department

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<u>Prior Year</u> For any assessment based upon a prior year

adjustment.

<u>Unreported Income</u> For any assessment based upon unreported income.

The General Tax Audit Technical Resource Section reviews all jeopardy assessments, except those issued by Special Investigations.

See GTAM 13240.3, Jeopardy Assessments, for additional information.

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# 13240.3 Jeopardy Assessments

We issue a jeopardy assessment when the Audit Program Manager determines that tax collection will be jeopardized by delay. Our Chief Counsel must approve all jeopardy assessments in writing. A jeopardy assessment is immediately due and payable. Collection proceedings may begin at once. See GPM 1420 - 1425, for more information.

#### **Audit Staff**

- Designate the case as a priority on PASS.
- Complete the Corporation NPA Worksheet Form FTB 6830-BCT, and/or the PAWS Input Worksheet - Form FTB 6831-B. See the instructions at GTAM 13240.2, Corporation Notice of Proposed Assessment, and GTAM 13240.1, PIT Notice of Proposed Assessment.
- Attach a detailed justification for the jeopardy.
- Have the supervisor and program manager review/approve the Notice of Proposed Assessment worksheets.
- When approved, email the following information to the appropriate designee in Legal for approval:
  - User Requesting Assessment
  - Supervisor Approval
  - Taxpayer (Entity) Name
  - Account Number/TPID Number
  - Tax Years to be assessed
  - Basis of Assessment
  - Tax by Year
  - Total liability, includes tax, penalty, and interest
  - Reason case is a Jeopardy
    - Supporting documentation must detail that the taxpayer meets one of the criteria as listed in IRS Regs 1.6851-1. A statement like "the taxpayer appears to be leaving the state" is not enough. Documentation must support the assertion that Jeopardy exists.
    - Prepare a Rush Action Slip Form FTB 7011. Attach the Rush Action Slip to the top of the physical file. See GTAM 13760, Rush Action Slip, for more information.

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 Tell the GTA Technical Resource Section about the jeopardy assessment. All jeopardy assessments go through the GTA Technical Resource Section. DO

SUPPORT.

 Prepare a Sticky Note to help the GTA Technical Resource staff identify the case as a jeopardy assessment (see GTAM 14510, Sticky Notes, for additional information).

NOT ROUTE THE CASE TO AUDIT BUSINESS.

 Route the audit file to the GTA Technical Resource Section. Route the physical file to:

GTA Technical Resource Section Mailstop D-756 ATTN: JA Review

 Transfer the electronic file to the GTA Technical Resource group worklist. For more information, see GTAM 13280, Transfer Case/Case Unit to Next Level.

#### **GTA Review**

- Review the audit file.
- FAX the approved Corporation NPA Worksheet Form FTB 6830-BCT, and/or the PAWS Input Worksheet - Form FTB 6831-B, the document with the legal department's approval, and the justification for the jeopardy assessment to the Business Transfers Jeopardy Assessment Desk.
- Complete and route the case according to standard procedures.

California Revenue and Taxation Code section 19084 states that within five days of mailing the jeopardy assessment, we mail a written statement to the taxpayer with the information we used to issue the jeopardy assessment. Within 30 days of mailing this written statement, the taxpayer may protest the jeopardy assessment. We have the burden to prove that jeopardy exists.

The filing of the protest will not suspend collections. If a protest is not filed within the 30-day period, the assessment becomes final.

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If a protest is filed, we have 90 days to make a determination, unless the taxpayer requests additional time in writing. We tell the taxpayer the final determination by issuing a Notice of Action. If we make no determination within the 90 days, the protest is deemed affirmed.

The taxpayer may appeal to the State Board of Equalization within 60 days of our determination. After this period closes, the determination is final. Filing an appeal will not suspend collections.

The State Board of Equalization has 60 days from the filing of the appeal to make a determination. If they make no determination within the prescribed time, the appeal is deemed denied.

Within 60 days of the Board of Equalization's determination, the taxpayer or we may bring civil action against the other in superior court. If no action is taken within 60 days, the Board of Equalization's determination is final. The filing of a civil action will not suspend collections.

The court has 60 days after proper service is made to make a determination. The determination made by superior court is final and conclusive, and not reviewed by any other court.

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# 13240.4 Notice of Proposed Assessment/Claim Denial on the Same Tax Year

We must take specific steps to ensure that taxpayers get protest/appeal rights, and that we place no undue burdens on taxpayers because of an Notice of Proposed Assessment / Claim Denial on the same tax year.

For example, we examine the 2001, 2002, 2003 returns, and a 2002 claim for refund return of an S-Corporation. The 2002 claim for refund increases the claimed Tax Credit from \$10,000 to \$40,000. The S-Corporation's Tax Credit is disallowed because the corporation does not qualify for the credit. Because the corporation is an S-Corporation, the 100% shareholder has a flow-through Tax Credit for the same tax years.

The shareholder originally claims a \$10,000 Tax Credit for tax year 2002, and later files a claim for refund to report an additional \$30,000 in Tax Credit. Shortly thereafter, we examine the S-Corporation returns.



#### Auditor - Personal Income Tax Cases

- If a credit balance exists on TI for the amended return amount, complete a Technical Support Request - Form FTB 7053 to request an account balance change. TI should reflect the original return tax liability before creating the Notice of Proposed Assessment. Attach the Technical Support Request to the face of the return, and route the file to Audit Business Support.
- Create the Notice of Proposed Assessment. See GTAM 13240, Complete Adjustment Forms (NPA, OA), for additional information.
- Create a separate letter to include with the Notice. This letter must explain that we issue the Claim Denial letter after the Notice is resolved.
- Draft the Claim Denial letter. Do not release the Claim Denial Letter. It should remain in the Draft Correspondence Folder.
- Create a Sticky Note for the file requesting Audit Business Support to "Keep the claim open until we take final action on the Notice. Please mail the Claim Denial letter once the Notice goes final. If the Notice is protested, do not mail Claim Denial letter. Instead, please route case

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to the Protest Unit." They will mail the Claim Denial letter once the Notice is finalized.

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Route the completed case to the GTA Technical Resource Section.

# <u>Audit Business Support - PIT Cases</u>

- Mail the Claim Denial letter once the Notice is final. Enclose Form FTB 1084 (Appeals Procedures - PIT).
- If the Notice is protested, route the case to the Protest Unit. Create a new Sticky Note requesting the Protest Unit to "Keep the claim open until we take final action on the Protest. Please mail the Claim Denial letter once the Protest is resolved."

#### Auditor - B&C Cases

- Prepare the Notice of Proposed Assessment, but do not deny the claim. We send the Claim Denial letter once the Notice is finalized.
   See GTAM 13240, Complete Adjustment Forms (NPA, OA), for more information.
- Include a paragraph on the Notice stating that the claim is considered denied at the time that the Notice goes final. Enclose Form FTB 1087 (Appeals Procedures - corp.).

## Reviewer (supervisor/TRS) - B&C Cases

- "Dog-ear" the Form FTB 6638 and write, "Deny claim after NPA goes final." See GTAM 16321, Closing Forms - Corp. Claims, for additional information.
- Place Form FTB 6638 behind the Batch Control Sheet (FTB 6148) or NPA Worksheet (FTB 6830-BCT).
- Forward the case to the GTA Technical Support.

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# 13240.5 Mirror Image NPA

A "*Mirror Image*" Notice of Proposed Assessment is one that we send to spouses (or ex-spouses) who reside at different addresses.



- When spouses have different addresses, PAWS indicates it is creating a "Mirror Image" Notice of Proposed Assessment (e.g., SPOUSE ADDRESS IS DIFFERENT FROM PRIMARY ADDRESS). Check TI to see if you need to update the spouse's address. If so, enter paragraph 00027 and write the sequence number and "MIRROR IMAGE" on the PAWS batch control worksheet in red.
- If completing a PAWS worksheet, write, "Mirror Image NPA needed" at the bottom of the worksheet with the other spouse's current address.

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# 13241 Rush Notices of Proposed Assessment

We must issue rush Notices of Proposed Assessment immediately. A rush Notice commonly occurs when the statute of limitations will soon expire. For cases with a short statute of limitations, see GTAM 13750, *Routing Short Statute of Limitations Cases*.

Another example is a jeopardy assessment. We treat all jeopardy assessments as rush Notices of Proposed Assessment. However, unlike regular rush Notices, after the audit supervisor/program manager reviews and approves it, route the audit file directly to the GTA Technical Resource Section. *Do not* route jeopardy assessments through Audit Business Support. See GTAM 13240.3, *Jeopardy Assessments*, for more information.

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## 13242 NPA Circle File

Create an NPA Circle File is created when we issue a Notice of Proposed Assessment on a tax year in which we have no return. The circle file serves as the placeholder for the physical audit file. The Document Locator Number (DLN) on the notice is OOOOOOO. You should create a circle file even if the taxpayer provides a copy of the return.

To create a circle file, treat the NPA Worksheet (Forms FTB 6830 and/or FTB 6831) as a replacement tax return. Write "Circle File," in red, across the top of the NPA Worksheet and attach it to the top of the physical file. If you get a waiver for a tax year with an NPA Circle File, attach the waiver to the top of the NPA Worksheet that now serves as the replacement tax return. Complete the rest of the file according to standard procedures.

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# 13243 Notices of Proposed Assessment - Information Copies to the IRS

In order to send an information copy of a Notice of Proposed Assessment to the IRS, check the "Copy to Federal" or "CC TO FEDERAL," on the NPA worksheets (Forms FTB 6830 and/or FTB 6831). Remember the federal statute of limitations.

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# 13244 NPACA - Notice of Proposed Adjustment Carry Over

CR&TC section 19043.5 authorizes us to issue a Notice of Proposed Adjusted Carryover Amount (NPACA) when an examination results in a reduction of a taxpayer's reported carryover amount. The taxpayer has protest and appeal rights even though the exam does not result in any additional tax. For purposes of the California Administration-Franchise and Income Tax section of the Revenue and Taxation code, we treat Carryover Adjustments like Notices of Proposed Assessment.

Although a taxpayer cannot appeal the State Board of Equalization decision because there is no deficiency to pay to enter Superior Court, the benefit of appealing to the Board is receiving a binding and conclusive determination regarding the carryover item. Their decision binds both the taxpayer and us to the amount of carryover. There are a few limited exceptions. If the taxpayer does not follow the Board decision in subsequent years, we can issue a math error assessment to correct the carryover amount instead of a Notice of Proposed Assessment.

Communicate clearly the process and consequences of issuing Carryover Adjustments to taxpayers and their representatives, since these notices are unique to California and there is no federal counterpart.

# **Issuing the Notice**

**When**: Guiding principle is to use the same procedures for the NPACA and the Notice of Proposed Assessment.

- Issue an NPACA when an audit results in no additional tax, but reduces a carryover item. For Revenue Agent Report workloads, we issue NPACAs when the federal audit results in no additional California tax but reduces a carryover item, as modified for California law.
- When an exam results in a Notice of Proposed Assessment, we do not need a separate notice for to reduce a carryover item for the same tax year. We include the carryover item in the Notice of Proposed Assessment.
- When allowing a claim for refund in full, we issue a NPACA for any reduction in carryover items for the same tax year.

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 When we deny a claim for refund in whole or in part, we issue an NPACA for any reduction in carryover items not related to the reason for the claim.
 If a taxpayer files a claim for refund because of a credit or loss issue, the denial letter gives appeal rights.

#### How:

The NPACA notice provides:

- The amount of the carryover reduction.
- The revised carryover amount.
- Protest procedures modified slightly to remove discussions of additional tax, interest, penalties, and payments.
- The protest deadline date.

A template of the NPACA is on PASS (1542 NPACA Letter, under the Draft Correspondence folder). You only need to add the explanation for the carryover item reduction and the protest deadline date. The template automatically fills in your name and number in the signature block. If you are not using PASS, the language in the PASS template is available through your system.

# **Closing the Case File**

- Place a copy of the NPACA on top of the closed case file to identify the case as an NPACA case. If case is subject to Technical Resource Section review, complete route slip FTB 6430 (see GTAM 13220).
- The person mailing the notice places a copy of the mailed notice on top of the case file before sending the case to the Notice of Proposed Assessment retention wall. This makes it easier for the staff handling cases on the retention wall to see the mail date.
- Add comments to the taxpayer's mainframe account (BETS or TI) noting:
  - That we issued an NPACA and mail date.
  - The revised carryover amount for the affected tax year.
  - Your name and 10-digit phone number.
     The information in these comments helps employees without access to PASS provide service to taxpayers, as well as serving a historical purpose on the mainframe. The responsibility for adding the comments starts with auditors. If someone else mails the notice, then responsibility

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transfers to that person. Each unit may adjust this step to suit their normal processes.

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- LIM date the case file, following the procedures in GTAM section 13800. The length of time depends on the facts and circumstances of each case.
- Flag subsequent years for follow up using PASS. Which years, and how many subsequent years, depends on the facts and circumstances of each case.
- Follow normal procedures for routing deficiency cases to Central Office: Audit Business Support (GTAM sections 13710, 13720, & 13740)
- If case results in issuing only an NPACA, transfer the PASS file to the following work list, even if case isn't subject to review: Audit Support/GTA Review. Owners of the work list transfer the PASS file to the appropriate retention work list when they receive the physical file.
- If a case results in issuing both NPACAs and Notices of Proposed Assessment, treat the case file no differently from a deficiency case. Follow usual review and routing procedures.

# **Protesting the Notice**

- Protest unit closes case by issuing an NPACA Notice of Action, a letter template also on PASS (1542a). The template offers a drop down menu to choose the final action: affirmation, revision, or withdrawal. PASS paragraphs are available to explain the notice. Hearing officers would add explanation of any revisions.
- If you do not use PASS, the language on the PASS NOTICE OF ACTION template is available for your system, without references to hearing officers.

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#### 13245 Over Assessments

#### **PIT Over Assessments**

Use the *Over-Assessment Worksheet* - Form FTB 6846 for all Personal Income Tax over assessments. Situations that require using this form are:

- The proposed audit adjustments result in over assessments.
- A claim for refund is increased.
- A claim for refund is partially denied, and we have not previously taken action on the claim.
- A claim for refund is allowed in full, and we have not previously taken action on the claim.
- An amended return (540X) is filed with additional tax due and processed/posted to the TI System. The amended return tax is decreased after examination.

For part-year/non residents, complete Forms FTB 6840A (Schedule I) and FTB 6840 (Schedule II) before starting the *Over-Assessment Worksheet*. Attach the Forms FTB 6840A and 6840 to the FTB 6846.

For additional claim/amended return information, see GTAM 16300, Claims.

The following instructions apply to the Over-Assessment Worksheet - Form FTB 6846:

- Taxpayer This section is for the taxpayer's name. If the taxpayer's current address differs from that on the return, enter the current address below the taxpayer's name.
- 2. **TP SSN** This section is for the primary taxpayer's social security number.
- 3. **TPID** This section is for the primary taxpayer's taxpayer identification account number, if used.
- 4. *Tax Year* This section is for the tax year on which we issue the refund.
- 5. **Amt. Claimed** This section shows any amount of refund claimed by the taxpayer.
- 6. **SP SSN** This section is for the spousal taxpayer's social security number.
- CC. Representative This section shows the name and address of the taxpayer's representative, if sending copy of the notice to the representative.
- 8. **SPID** This section is for the spousal taxpayer's taxpayer identification

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account number, if used.

- Revenue Code This section shows the seven-digit numeric activity code. See GTAM 13500, Revenue Codes / Workload Codes, for more information.
- SOL This section shows the statute of limitations date. Remember that the statute of limitations for refunds often differs from the statute of limitations for deficiencies. See GTAM 10000, Statute of Limitations, for additional information.
- 11. **ENCLOSURE(S)** Check the "enclosure" box if enclosing additional schedules and/or explanations with the over assessment notice.
- 12. **Std. Para(s)** This section lists the most commonly used standard paragraphs. Check the appropriate box. If none of the paragraphs is appropriate, enclose an explanation (see #11 above).
- 13. AGI / TI Check the AGI (Adjusted Gross Income) or TI (Taxable Income).
- 14. **per form** This section shows the AGI or TI, based upon the box checked in # 13 above, from the latest return processed/posted to the TI System. For 540NR returns, enter either:
  - Line 1 of Form FTB 6840A (Sch. I), and
  - Line 1 of Form FTB 6840 (Sch. II). OR
  - PASS California Non-resident or part year resident net tax liability worksheet", page 1 & 2. (Found in Schedules folder)

Enclose the schedules with the over assessment notice.

- 15. **Adjustments** This section lists the individual proposed adjustments. For 540NR returns, write, "*Adjustments per attached schedule*." Be sure to enclose the Schedules.
- 16. **Paragraph(s)** This section lists the standard paragraphs used to explain the adjustments, if none of the most commonly used standard paragraphs is appropriate (see #12 above).
- 17. Revised AGI / TI Check the AGI or TI box, depending upon the box checked in #13 above, and the revised amount entered. For 540NR returns, check the TI box and enter the revised total taxable income from FTB 6840B (Sch I).
- 18. **Total Tax** This section shows the amount of tax on the revised AGI or TI. This is the amount of tax before any exemptions or credits. Check the applicable source used to compute the total tax. For 540NR returns, enter the tax (before exemptions) from the Form FTB 6840 (Sch II).
- 19. *Credits for exemption* This is the total dollar amount of the exemption credits.
- 20. Add: Tax This section shows any additional tax from Schedule G-1 or

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Form FTB 5870A.

- 21. **Other Credits** This section lists all credits that apply, besides the exemption credits. If a credit is adjusted, enter the revised credit amount, not the difference.
- 22. *Other Taxes* This section shows the revised Preference Tax, Alternative Minimum Tax, tax on early withdrawal from an IRA, or other taxes.
- 23. **Net tax liability** If no penalties are assessed this is the final line that you complete.
- 24. **Penalty** The type of penalty, the percentage, and the amount.
- 25. **Preparer** Your unit (PUC), initials, phone number, and the preparation date
- 26. **Reviewer** The reviewer's unit (PUC), initials, phone number, and the review date.

**NOTE**: If a PASS case, write/stamp the word, "PASS," in purple on the upper right hand corner of the form.

# **Corporation Over Assessments**

Use the *Corporation NPA Worksheet* - Form FTB 6830-BCT for all corporation over-assessments, unless denying or allowing in full a corporation claim for refund. If this is the case, use the *Auditor's Recommendation Formal Claims* - Form FTB 6638. For more claim/amended return information, see GTAM 16300, *Claims*.

Situations using the *Corporation NPA Worksheet*, include:

- The proposed audit adjustments result in over assessments.
- A claim for refund is increased.
- A claim for refund is partially denied, and we have not previously taken action on the claim.
- An amended return is filed with additional tax due and processed/posted to the BETS System. The amended return tax is decreased after examination.

If the overassessment is larger than \$250,000 resulting from an overpayment of taxes, a cancellation of tax, or a combination of overpayments and cancellations, we must fill out FTB Form 6163 (Abatement/Refund Memo). These refunds require administrative review before being issued, and this form provides the information necessary for that review.

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Complete the form FTB 6163 in the following manner:

- TO: Enter "General Tax Audit Program Bureau"
- From: Enter appropriate GTA Program
- RE: Enter the taxpayer's name
- Corp No: Enter the taxpayer's California corporation number.
- INCOME YEAR: Enter each taxable year for which an abatement/refund is issued.
- ABATEMENT/OVERPAYMENT AMOUNT: Enter the amount of change in tax and penalty per income year. Enter the amount in parenthesis.
- BASIS: Explain why the amount is being refunded.
- STATUTE: Enter the earliest Statute of Limitations date. You must complete this section.

See the instructions at GTAM 13240.2, *Corporation Notice of Proposed Assessment (NPA)*, for the steps to prepare an *Over Assessment*.

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## **13246 NO-CHANGE AUDITS**

If the case is accepted as filed, issue the standard "*No-Change*" letter. We issue No-Change letters on all completed audit years that do not result in additional tax, an NPACA (See GTAM 13244), or an overassessment. Send No-Change letters directly to the taxpayer. Send a copy of the letter to the representative if requested. See GTAM 9600, *No-Change Letters*, for more information.

**NOTE**: If we receive a federal determination (Revenue Agent Report) *after* an FTB no-change audit, do not reopen the audit *unless* it meets the exceptions listed under the *Guidelines for Previously Audited Tax Years* (see GTAM 16400, *Guidelines for Previously Audited Tax Years*).

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## 13250 COMPLETE NOTICE WINDOW

The Notice window displays a list of notices created for the case unit. The system allows you to log multiple determinations, such as the denial of a claim as well as a notice, on the same case unit. All notices are generated on external systems (BETS and TI). You should enter the available information on the Notice window. Audit Business Support updates this information. Consistently entering and updating the determination information helps to generate timely and accurate reports from PASS.

The Notice Window has two parts, the *Notice Detail* and the *Notice Issues*.

**NOTE**: You are responsible for entering the available information. The reviewer enters any changes. Audit Business Support updates this information. Even if you do not know the actual amount, you must reasonably estimate it.

**NOTE**: You must note, in purple, on the *Batch Control Worksheet* that the case is a PASS case. This helps the Audit Business Support units process the case.

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#### 13260 ASSEMBLE THE PHYSICAL CASE

Usually, we do not print a complete copy of the electronic file when the case is closed. All information is available online. The physical file should consist of the following:

**NOTE:** Attach the physical file to the tax return for the most recent audited year. If that year has amended returns, the physical file should be attached to the most recent amended return.

- Complete the Audit Report Form FTB 6430. Include your and your audit supervisor's telephone number. Print a copy of the Audit Report for the physical file. Note in the Report that there is an associated electronic/physical file. The Audit Report serves as a transmittal document to Central Office. Attach a copy of this form to the physical file. Write/stamp the word, "PASS," in purple, across the front of this form.
- 2. PAWS/CLAWS Batch Control Worksheet Form FTB 6148. The Batch Control Worksheet template is in the Administration folder. The completion of this form by the field is optional. Write/stamp the word, "PASS" across the front of the hard copy of this form in purple. NOTE: All Central Office PASS cases, subject to review, must have the Statute date written and circled in red, on the notes section of the Batch Control Worksheet. Document the preparation of the PAWS/CLAWS Batch Control Worksheet Form FTB 6148, in the Event Log.
- 3. The PAWS NPA Worksheet Form FTB 6831, the BETS NPA Worksheet Form FTB 6830-BCT, the Accounting Instructions Corp. Form FTB 6213A, the Auditor's Recommendation Formal Claims Form FTB 6638, the PIT Over-assessment Form Form FTB 6846. Write/stamp the word, "PASS," in purple, across the front of these forms
- 4. Received Correspondence Index.
- 5. Received Correspondence includes photocopies, exhibits, and other miscellaneous items.
- 6. Tax Return(s). Write/stamp the word, "PASS" in purple on the upper right hand corner of the returns. If this interferes with the Document Locator Number, write/stamp the word in the middle of the return.



Field Offices; assemble the physical file in this order:

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• Audit Report - Form FTB 6430. Write/stamp the word, "PASS," across the top of this form in purple.

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- Rush tag if needed (see GTAM 13760, *Rush Action Slip*). Write/stamp the word, "PASS," in purple, on the upper right hand corner of this form. Attach to the *Audit Report* Form FTB 6430.
- PAWS/CLAWS Batch Control Worksheet Form FTB 6148. Optional for field auditors. Write/stamp the word, "PASS" across the front of the hard copy of this form in purple.
- Put the PAWS NPA Worksheet Form FTB 6831, the BETS NPA Worksheet Form FTB 6830-BCT, the Accounting Instructions Corp. Form FTB 6213A, the Auditor's Recommendation Formal Claims Form FTB 6638, and the PIT Over-assessment Form Form FTB 6846 behind the Audit Report Form FTB 6430. Write/stamp the word, "PASS," in purple, on the upper right hand corner of the hard copy of the forms.
- Any correspondence sent outside of PASS.
- Received Correspondence (index).
- All received correspondence and documentation.
- Tax Return(s). Write/stamp the word, "PASS," in purple, on the upper right hand corner of the returns. If this interferes with the Document Locator Number, print/stamp the word in the middle of the return.

# Central Office: assemble the physical file in this order:

- Audit Report Form FTB 6430. Write/stamp the word, "PASS" across the top of this form in purple.
- Rush tag if needed (see GTAM 13760, Rush Action Slip). Write/stamp the word, "PASS" in purple, on the upper right hand corner of this form. Attach to the Audit Report - Form FTB 6430.
- PAWS/CLAWS Batch Control Worksheet Form FTB 6148.
   Write/stamp the word, "PASS" across the front of the hard copy of this form in purple.
- Put the PAWS NPA Worksheet Form FTB 6831, the BETS NPA Worksheet Form FTB 6830-BCT, the Accounting Instructions Corp. Form FTB 6213A, the Auditor's Recommendation Formal Claims Form FTB 6638, and the PIT Over-assessment Form Form FTB 6846 behind the Audit Report Form FTB 6430. Write/stamp the word, "PASS" in purple, on the upper right hand corner of the hard copy of the forms.
- Tax Return(s). Write/stamp the word, "PASS" in purple, on the upper right hand corner of the returns. If this interferes with the Document

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Locator Number, print/stamp the word in the middle of the return.

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Any correspondence cent cutoide of DACC with a Cent

- Any correspondence sent outside of PASS with a Sent Correspondence folder screen print. Attach to the back of the return for PIT only. If a corporation, place the correspondence in the corporation folder.
- Received Correspondence folder screen print (index). Attach to the back of the return for PIT only. If a corporation, place the correspondence in the corporation folder.
- All received correspondence and documentation. Attach to the back of the return for PIT only. If a corporation, place the correspondence in the corporation folder.
- NOTE: All Central Office PASS cases, subject to review, must have the Statute of Limitations date written and circled in red, on the notes section of the PAWS/CLAWS Batch Control Worksheet - Form FTB 6148.

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#### 13265 REFERENCE RETURNS

Tax returns associated with the audit for years or entities that we did not audit, and where we did not create a case unit, are called Reference Returns. Return any tax returns that you used as a reference to Data Services and Storage Section after the case is released. If you want to keep those returns with the audit file, you must create a case unit for each return in PASS. This will help us to track the physical returns' location.

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# 13270 VERIFY ADDRESSES, STATUTE, CASE INFORMATION, ETC.

Verify all information before closing the case.

- Taxpayer's address. Is it consistent between PASS and BETS/TI? Should we update it?
- The Statute of Limitations for each individual year's and each entity.
- Are any statute of limitations waivers attached to the front of the returns?
- Is the documentation cross-referenced?
- If you propose a Notice of Proposed Assessment, have you explained why? It is not enough to state, "The revision is based on the schedules provided to the taxpayer's representative by the auditor." You must explain the adjustment on the Notice.

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#### 13280 TRANSFER CASE/CASE UNIT TO NEXT LEVEL

GTAM 13281 Transferring Case Unit Only

When closing a case, transfer the online file and the physical files at the same time. Transfer the online file to the appropriate person, team, or group. Immediately transfer the physical file to the same person, team, or group. Be sure that all pertinent information is in the online file in case the physical file is delayed. This way, staff can process the online file without the physical file.

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# 13281 Transferring Case Unit Only

You may close Case Units separately from other associated case units. In addition, you may keep case units on separate worklists whether those worklists are individual or group. For example, if you need to close one partner's case unit while keeping two other partners' case units, you can close one partner.

If the case unit needs more work:

- Leave the case unit open.
- Send through Review, if necessary.
- Send through Audit Business Support groups for processing.
- Use Sticky Note to tell other users that you need the case unit back (see GTAM 14510, Sticky Notes, for additional information).

If no more work is needed on the case unit, follow normal closing procedures.

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#### 13290 DEACTIVATE THE BETS NOTIFICATION FLAG

When a case is completed, deactivate the BETS Notification Flag. Audit Business Support deactivates the Notification Flag on all cases routed to them. For cases not routed through Audit Business Support, such as no-change cases and surveys, you or the supervisor deactivate the Notification Flag.

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## 13300 OFFSET CASE

An Offset Case issues one or more Notices of Proposed Assessment, Notices of Action, or Notices of Revision, and one or more Notices of Proposed Over-Assessment to the same taxpayer for different years. Offset procedures apply audit-generated refunds against outstanding deficiencies.

The deficiency assessment and the proposed overpayment will automatically be held pending the protest period expiration. If the taxpayer does not file a protest, then the Audit Business Support Section makes the appropriate offset. In some situations, a deficiency or overpayment may *not* be related to another Notice of Proposed Assessment or Overassessment. In these situations, they can process the unrelated notice separately regardless of whether a protest is filed.

You need to identify all Offset Cases as:

- Agreed (taxpayer agrees with the proposed adjustments);
- **Unagreed Related** (related adjustments resulting in an notice of Proposed Assessment and Overassessment for different tax years); or
- **Unagreed Unrelated** (unrelated adjustments in different tax years).

The manual forms and PASS templates include "Notice Related" and "Notice Unrelated" boxes. Mark the appropriate box when preparing the worksheets.

Notices are "related" if the adjustments depend upon adjustments made in other tax years for the same taxpayer. An example of related notices is a bad debt that was disallowed in one tax year, resulting in a tax deficiency, but allowed in a different tax year, resulting in an over-assessment.

"Unrelated" notices are notices for the same taxpayer that are not transactionally related. The taxpayer's protest of one notice would have no effect on the other notice. An example of unrelated notices is a bad debt adjustment in one tax year, and a business expense adjustment in a different tax year.

Once the notices have finalized, the Notices of Proposed Overassessment offset, and we refund or bill the net amount.

To facilitate offset case processing, observe the following steps:

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#### CORPORATION PROCEDURES

<u>Notices of Proposed Assessment or Overassessment</u> with unrelated overassessment notices:

- 1. Check the unrelated notice box on any over-assessment notices that we should refund and not offset if a protest is filed.
- 2. Check the related box on any Notices of Proposed Assessment or Overassessment that should remain together.
- 3. We forward protested Notices of Proposed assessment to the Protest Unit for resolution.
- 4. Refund the Notices of Proposed Overpayment without offset.
- 5. If the notices are not protested, offset the Overassessment against the Assessment and refund or bill the balance.

# Related Notices of Proposed Assessment and Overassessment:

- 1. Check the related notice box on all over-assessments and assessment notices. Keep cases including all related notices together in one related package, sometimes known as a consent package.
- 2. Issue Notices of Proposed Assessment and Overpayment and hold them pending protest for 90 days, 60 days protest period and 30 days processing.
- 3. If we receive no protest after the 90 days, offset the Notices of Proposed Overpayment against the Assessment and refund or bill the balance.
- 4. If a protest is filed, forward all related overpayment and assessment notices to the Protest Unit for resolution.
  - After the protest is resolved, issue Notices of Action and reissued notices of Proposed Overpayment and hold for 60 days (30 day appeal + 30 day processing) pending appeal.
  - After 60 days, offset Notices of Proposed Overpayment against the Notices of Action and refund or bill the balance if no appeal is filed.
- 5. If an appeal is filed, forward all related overpayment and assessment notices to the Legal Appeals Desk for resolution.

 Do not process any bills and refunds/offsets resulting from related notices until the appeal is resolved.

 After the appeal is resolved, offset Notices of Proposed Overpayment against the Notices of Determination and bill or refund the balance.

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# <u>Authorized Offset/Mixed Files with Related Over-Assessment and</u> Assessment Notice(s):

- 1. Check the related notice box on all over-assessment and assessment notices. Write the word "OFFSET" on top of the over-assessment notices to indicate taxpayer authorization. Authorization is written approval from the taxpayer or representative, to offset an over-assessment to an assessment before expiration of the 60 days protest period.
- 2. If a technician in BE Audit Business Support determines that a refund is due after offsetting the overpayment, offset immediately and issue the refund.
- 3. If the related over-assessment does not result in a refund, hold the case 90 days (60 days pending protest + 30 days processing). **NOTE:** Do not pursue an authorization to offset if the audit is not agreed.
  - Miscellaneous Audit Instructions: If miscellaneous instructions are included in one of the above case scenarios and a bill or refund is issued despite a filed protest, check the unrelated notice box. We will send the refund or bill before referring the case to the protest unit. A few examples include: instructions for self assessed tax/Revenue Agent Report that we should bill immediately, cancellation of tax due to an amended return being accepted as filed/Revenue Agent Report that requires immediate refund despite protest.

# PIT PROCEDURES

Notices of Proposed Assessment/Overassessment with unrelated overassessment notices:

- 1. Check the unrelated notice box on any over-assessment notices that should be refunded and not offset in case a protest is filed.
- 2. Check the related box on any notices that should remain together.
- 3. Forward protested Notices of Proposed assessment to the Protest Unit for resolution.
- 4. If *unagreed*, offset the Notices and refund or bill the balance to the taxpayer when the notice is final. If we receive a protest, *release the overassessment immediately, without offsetting against the*

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assessment. The assessment is then resolved through normal protest procedures.

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5. If agreed, offset the Notices offset and refund or bill the balance to the taxpayer *upon issuing the Notices*.

# Related Assessment and Over-Assessment Notice(s):

- 1. Check the related notice box on all over-assessment and assessment notices. Keep cases that include all related notices together in one related package.
- 2. For *unagreed* Notices of Proposed assessment and Overpayment, Audit Business Support will and hold pending protest for 90 days (60 day protest period + 30 day processing). If *agreed*, offset the Notices and refund or bill the balance to the taxpayer upon issuing the Notices.
- 3. If we do not receive a protest after the 90 days, Audit Business Support will offset the notices of Proposed Overpayment against the Assessment and refund or bill the balance.
- 4. If a protest is filed, forward all related overpayment and assessment notices to the Protest Unit for resolution.
  - After the protest is resolved, issue Notices of Action and reissued Notices of Proposed Overpayment and hold for 60 days (30 day appeal + 30 day processing) pending appeal.
  - After 60 days, offset Notices of Proposed Overpayment against Notices of Action and refund or bill the balance if no appeal is filed.
- 5. If an appeal is filed, forward all related overpayment and assessment notices to the Legal Appeals Desk for resolution.
  - Do not process any bills or refunds/offsets resulting from related notices until the appeal is resolved.
  - After the appeal is resolved, offset the Notices of Proposed Overpayment against Notices of Determination and refund or bill the balance.

# <u>Authorized Offset/Mixed Files with Related Over-Assessment and Assessment Notices:</u>

 Check the related notice box on all over-assessment and assessment notices. Write the word "OFFSET" on top of the over-assessment notices to indicate taxpayer authorization. Authorization is written approval from the taxpayer or representative to offset an overassessment to an assessment before expiration of the 60-day protest period.

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2. Offset the Assessments and Overassessments and refund or bill the balance to the taxpayer *upon issuing the Notices*. **NOTE:** Do not pursue an authorization to offset if the audit is unagreed.

Miscellaneous Audit Instructions: If miscellaneous instructions
are included in one of the above case scenarios and a bill or
refund should be issued despite a filed protest, check the
unrelated notice box. We will send the refund or bill before
referring the case to the protest unit. A few examples include:
instructions for self assessed tax/Revenue Agent Report that we
should bill immediately, cancellation of tax due to an amended
return accepted as filed/Revenue Agent Report that needs
immediate refunding despite the protest.

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## 13400 PERSONAL INCOME TAX / CORPORATION MIXED FILES

A Personal Income Tax/Corporation mixed file includes notices for related PIT and corporation taxpayers and generally involves income and deductions transferred from a PIT account to a corporation account, or vice versa. These cases require special handling.

Occasionally, the file consists only of Notices of Proposed Assessment. However, the majority includes Notices of Proposed Assessment for one taxpayer and over-assessments for the other. Over-assessments for mixed files are issued as "Notice of Proposed Over-assessments," since we do not generally issue refunds until the related Assessment is either paid or final.

The author must identify PIT/Corporation Mixed files by checking the "MIXED FILE" box on the PAWS/CLAWS Batch Control Worksheet and/or including the words "MIXED FILE" on the Audit Report - Form FTB 6430.

All Notices of Proposed Overassessment should inform the taxpayer that we do not issue refunds until the related Notices of Proposed Assessment are paid or final.

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#### 13500 REVENUE CODES / WORKLOAD CODES

GTAM 13510 Rules of Revenue Codes

We use revenue codes to monitor assessment/refund activity. We identify all such transactions, entered on taxpayer accounts, by the revenue code. The revenue code is a seven-digit numeric activity code composed of three defined segments. Since implementing BETS, it is a seven character alphanumeric code for Corporations and Partnerships activity. The three defined segments are:

- Payroll unit The first three digits. The code 200 indicates that it is a machine-generated assessment.
- <u>Program Budget Code</u> The fourth and fifth identify the departmental program element to which we attribute the revenue action.
- <u>Profile Code</u> The optional sixth and seventh digits further define the program element or workload to which we attribute the revenue action.

For Corporations, we have historically referred to the last digits as the IRS Indicator and the Assessment Type. In the BETS system, the two digits are separate fields. However, we now refer to these two characters as the profile code.

**IRS Indicators:** 

0 = Non RAR

1 = Voluntary RAR

2 = Non voluntary RAR

## Assessment Types:

1 = Over-Assessment

2 = NPA (and O/A that reduces NPA)

3 = Jeopardy Assessment

#### **REVENUE CODES**

 Description
 Field (F) Central (C)
 Rev. Code (C)
 Explanation

 Personal Income Tax:
 F/C
 08XX
 0893 Central Office only

 Claims/Amended Returns
 Returns

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PC ASTRA (field) C Corporation 540 ASTRA Misc. 540 NR Residence	F F F F	10XX 1050 1097 13XX 1320	Related PIT Adjustment
Determination Fiduciary Partnerships	F/C F/C	14XX 1510	Estates & Trusts Pulled for partnership; adjusted for partnership
Partnership (Claims) S Corporation	F/C F/C	1515 1530	Claims Pulled for S-Corp; adjusted for S-Corp
S Corporation (Claims)	F/C	1535	Claims
CASE CASE	F F	1570 1571	Pulled for LIT; adjusted for LIT Pulled for LIT; adjusted for partnership
CASE CASE CASE LLC (PIT) RAR (field)	F F F/C F	1572 1573 1579 1590 16XX	Pulled for LIT; adjusted for S-Corp Pulled for LIT; adjusted for C-Corp Pulled for LIT; adjusted for LLC
C-Corporation	C	2250	Change to related PIT. Does not include 396 Central Office audits
REVENUE CODES			
<u>Description</u>	Field (F) Central (C)	Rev. Code	<u>Explanation</u>
Personal Income Tax:			
PIT Audit PIT Audit RAR (Central)	C C C	23XX 2375 24XX	CASE audits State Farm
Trusts Estates Estates & Trust	0000	2515 2592 2597	Trust Claims Estate Claims
RAR-Student Assistant	С	26XX	2601 Clerical RAR; 2602 Student RAR; 2603 TEFRA RAR
Student Assistant FE Residence	C F/C	2752 34XX	Substandard Housing

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Determination F/C FE Investigations 35XX FE Illegal Tax F/C 37XX Protestor **FE Collections** F/C 39XX PC ASTRA C 50XX 5030=Punitive Damages; 5032=F/E; 5076=Paid Amended Referrals 5097=Legal Support Referral PIT Audit 5100-Prior year ASTRA C 5499 RAR-Classified C 51XX Classified Accounts Accts F Training (Field) 56XX RAR-Field Training F 57XX Discovery (Central) C 58XX 5810 Central Office Desk Discovery (field) F F 59XX F/C 5910 Discovery - PIT Partner Partnership (PIT Partner) - Discovery **REVENUE CODES** Description Field (F) Rev. **Explanation** Central Code (C) **Personal Income** Tax: S-Corp (Discovery) F/C 5911 Discovery Clerical Audit 60XX-С 69XX Training (Central) C 67XX FE Clerical Audit C 78XX Paraprofessional C 90XX-99XX **Corporation Tax:** Claims (non apport) C 16XX F Claims (non apport) 17XX Field Claims C Corp (non apport) С 21XX **Includes Post Dissolution** C 24XX Bankruptcy RAR (non apport) С 28XX Investigations 35XX

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Non Apportioning F 44XX Majors C Corp (non apport) F 45XX C Corp Adjustments F RAR (non apport) 48XX Partnership (Corp. F/C 6610 Corp (S or C) partner adjustment Partner) Partnership (Corp. F/C Corp (S or C) partner adjustment -6615 Partner) - Claims Claims S Corporation F/C 6630 S Corporation F/C 6635 Claims (Claims) C Corp/ (Discovery C 7280 C Corp - Banks, F/E, Credit Union Non Apportion) COGS F Discovery (non 75XX apport) **REVENUE CODES** Field (F) Rev. **Explanation** Description Central Code <u>(C)</u> F/C **Corporation Tax:** 7510 Corp (S or C) partner adjustment -Partnership (Corp Discovery Partner) - Discovery S Corporation F/C 7511 Discovery (Discovery) LLC (C Corp) F/C 8490 92XX Training C F Training 96XX

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#### 13510 Rules of Revenue Codes

Select the revenue code according to the activity that generates the assessment.

Credit an assessment of additional tax due to an audit to the appropriate revenue code. If the revenue is a combination of a Revenue Agent Report and another audit source, use the code reflecting the largest part of the adjustments.

Charge decreases to self-assessed tax, or abatements of self-assessed tax, to a revenue code showing what caused the decrease. If the decrease results from a combination of activities (RAR, Claim, and Audit), the code should reflect the largest part of the decrease.

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### 13600 PAYMENTS RECEIVED AT AUDIT

GTAM 13605	Payments Received at Audit-Electronic Funds Transfer (EFT)
GTAM 13610	Field Offices - Payments Received at Audit
GTAM 13611	Corporation Remittance - Form FTB 6352
GTAM 13612	PIT Remittance - Form FTB 6350
GTAM 13620	Central Office - Payments Received at Audit
GTAM 13650	Cash Bonds

Let taxpayers know about how long it will take before they get the Notices of Proposed Assessment, which normally takes two to four months. Give them the chance to pay proposed assessments at the audit's close. Tell taxpayers to write their account number on the check and the tax years to which we should apply the payment.

Be sure to notify Audit Business Support that payment was received from the taxpayer so that the NPA will be prepared correctly.

Process completed audits promptly. If there is a delay in processing, tell the taxpayer about the delay and note it in the event log.

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# 13605 Payments Received at Audit-Electronic Funds Transfer (EFT)

Taxpayers subject to the Electronic Funds Transfer (EFT) requirements must also make Assessment payments through EFT. *Do not* accept a check from a taxpayer subject to the EFT payment requirements.

California law requires bank and corporation taxpayers who meet the following criteria to make all payments by EFT:

Beginning January 1, 1995

- Any taxpayer with any estimated tax payment or extension payment exceeding \$20,000, or
- Any taxpayer whose total tax liability exceeds \$80,000 for any taxable year beginning on or after January 1, 1995.

Once a taxpayer is declared a mandatory EFT participant, it must remit all corporate income and franchise tax payments through EFT regardless of the type of payment, the amount of payment, or the taxable year to which the payment applies. If the taxpayer remits payment by other means, we assess the taxpayer a penalty equal to 10 percent of the amount paid.

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# 13610 Field Offices - Payments Received at Audit

When you receive payment in the field, prepare the remittance forms, FTB 6352 (Corp.) & 6350 (PIT), in duplicate. Give the original form, and the remittance, to the field office cashier for routing to Central Office:

Video Unit Mailstop A-8.

Staple the duplicate copy of the form to the front of the *Audit Report* - Form FTB 6430 to alert the Review staff that the assessment has been paid. These forms are not required for Electronic Fund Transfer (EFT) payments. Make a comment in the Event Log and on the taxpayer's TI/BETS account that we have received the payment, and to which tax years the payment applies.

**NOTE**: Taxpayers that are subject to the Electronic Funds Transfer (EFT) requirements must also make NPA payments through EFT. *Do not* accept a check from a taxpayer subject to the EFT payment requirements.

California law requires bank and corporation taxpayers who meet the following criteria to remit all payments by EFT:

Beginning January 1, 1995

- Any taxpayer with any estimated tax payment or extension payment exceeding \$20,000, or
- Any taxpayer whose total tax liability exceeds \$80,000 for any taxable year beginning on or after January 1, 1995.

Once a taxpayer is declared a mandatory EFT participant, it must remit all corporate income and franchise tax payments through EFT regardless of the type of payment, the amount of payment, or the taxable year to which the payment applies. If the taxpayer remits payment by other means, we will assess the taxpayer a penalty equal to 10 percent of the amount paid.

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# 13611 Corporation Remittance - Form FTB 6352

FRANCHISE TAX BOARD		CORPORATE MEMORANDUM	OF REMITTANCE
Corporate Name:	(2)	(1) Posting Control(3)	Document(z) Date(s)
Income Year	Assessment No.	Amount	Total Paid(9)
(4)	(5)	(6)	
FTB 6352 (REV-11 - 90)			UNIT / INITIALS

The following information relates to the above *Corporate Memorandum of Remittance* - Form FTB 6352 (Corp.):

- 1. Corporation name to which the payment should post.
- 2. Corporation ID number.
- 3. Posting control number.
- 4. Taxable year of assessment to which the payment should post.
- Leave blank.
- 6. Amount of deficiency and interest by year. The total of these lines should equal line number 9.
- 7. Enter the correct code.
- 8. Date of payment.
- 9. Total amount paid.
- 10. Payroll Unit Code (PUC) / Initials of auditor.

At the bottom of the form, write in red, "NPA not yet issued. Place payment in non-billable status."

Failure to follow the above procedures causes the payment to post to a final/billable status. This will result in a refund to the taxpayer, or the application of the payment to a liability. Be sure to complete the form in *ink*.

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## 13612 PIT Remittance - Form FTB 6350

FAXPAYER'S NAME		BR. CODE	BATCH NO.
(	1)	(6)	(7)
ADDRESS		ACCOUNT NO.	
(	2)		(8)
CITY, STATE	ZIP CODE	DATE RECEIVED	•
(3)			(e)
SPOUSE'S NAME	<u>.</u>	TAX YEAR	DOC. CODE
(4)		(10)	(11)
SPOUSE'S SSN		AMOUNT PAID	
(5)			(12)

The following information is keyed to the above *In-Lieu Remittance Document* - Form FTB 6350 (PIT):

- 1. Taxpayer's name.
- 2. Taxpayer's address.
- 3. Taxpayer's city, state, and zip code.
- 4. Spouse's name.
- 5. Spouse's SSN.
- 6. Field office payroll unit code (PUC).
- 7. Leave blank.
- 8. Taxpayer's account number (SSN plus first four letters of the taxpayer's last name).
- 9. Date of payment.
- 10. Tax year(s) involved.
- 11. Insert the correct code.
- 12. Amount of deficiency and interest per year.

At the bottom of the form, write in red, "NPA not yet issued. Place payment in non-billable status."

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Failure to follow the above procedures will cause the payment to post to a final/billable status. This will result in a refund to the taxpayer, or the application of the payment to a liability. Be sure to complete the form in *ink*.

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# 13620 Central Office - Payments Received at Audit

We will process any payment received by a Central Office auditor when Receiving opens the mail. They will provide a photocopy of the remittance to the Central Office auditor for the workpaper files. You should also note in the Event Log and on the taxpayer's TI/BETS account that we have received payment, and to which tax years the payment applies. **NOTE**: Taxpayers that are subject to the Electronic Funds Transfer requirements must also make NPA payments through EFT. *Do not* accept a check from a taxpayer subject to the EFT payment requirements. To avoid penalties, the taxpayer must make their payment using EFT.

**NOTE**: If you work in the Central Office and receive a payment at your desk, refer to the specific procedures (see GTAM 13610, *Field Offices - Payments Received at Audit*, see GTAM 13611, *Corporation Remittance - Form FTB 6352*; and see GTAM 13612, *PIT Remittance - Form FTB 6350*).

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### 13650 Cash Bonds

Taxpayers can make payments to FTB in the form of a "cash bond". This cash bond stops the accrual of interest on the tax due. If the taxpayer makes a payment in the form of a "cash bond", and later wins at protest (or appeal), the "cash bond" is refunded to the taxpayer without interest. If the taxpayer wants to post a "cash bond", they must make the request in writing, and submit it with the payment.

A "cash bond" is different from payments made "as a payment of tax". "Payments of tax" are immediately credited to the taxpayer's account, or are placed in suspense pending the finalization of an NPA. Once the NPA goes final, we credit the payment to the liability on the NPA. If the taxpayer protests the NPA, and prevails at protest (or appeal) the payment of tax is refunded to the taxpayer, and we pay interest to the taxpayer from the date of the payment

There are two main reasons why taxpayers might want to use a "cash bond". First, payment of a "bond" does not start the clock running for the 1-year refund statute of limitations after payment of tax. The 1-year statute begins whenever the "bond" becomes a "payment of tax". The "cash bond" becomes a "payment of tax" at the time the protest is resolved, and the NPA becomes due and payable, or whenever the taxpayer requests in writing to treat the bond as a "payment of tax".

Second, the taxpayer can ask for the money back at any time prior to the NPA becoming due and payable, and we will give it to them, again without interest, and subject to offset of other liabilities.

Fiscal Accounting will hold the money in a trust account. A cash bond payment is not posted to the taxpayer's TI/BETS account until it becomes a payment of tax.

#### What To Do When A Cash Bond Payment Is Received.

Prepare remittance forms (FTB 6352 for Corporations & FTB 6350 Personal Income Tax) when you receive a cash bond payment. However, do not process the payment. Route the original form and the remittance directly to:

Fiscal Accounting MS-B23

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At the bottom of the remittance form, write in red "Cash Bond Payment. Do not Process. Route payment directly to Fiscal Accounting, MS-B23". Make a copy and keep with the audit file.

Add a comment to the taxpayer's account on TI/BETS. Because the system does not show these payments, the comments are the only record on TI/BETS that a cash bond was received. If the case is on PASS, also record it in the Event Log. Include the following information:

- Cash bond payment received
- Date payment received by FTB
- Amount of payment and tax years
- Payment is held in Fiscal Accounting

Attach a sticky note to the PASS case to alert staff of the cash bond payment.

## Closing The Case

Staple the copy of the remittance form to the front of the audit report Form FTB 6430 to alert the support staff to manually compute the interest.

#### Special Circumstances

Prior to the resolution of the case, the taxpayer may request (in writing) that the cash bond be a payment of tax, or the taxpayer may request a refund of the cash bond.

 Forward a copy of the taxpayer's request to Fiscal Accounting, authorizing them to release the funds for processing.

Place a comment in the TI/BETS account and the PASS Event Log

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## 13700 ROUTING THE PHYSICAL & ELECTRONIC FILES

GTAM 13710	Field Office PASS Cases
GTAM 13720	Central Office PASS Cases
GTAM 13730	Field Offices Non-PASS Cases
GTAM 13740	Central Office Non-PASS Cases
GTAM 13750	Routing Short Statute of Limitations Cases
GTAM 13760	Rush Action Slip

When you are transferring a case, tell the recipient about any special needs such as a short Statute of Limitations or to direct the case to one specific person. Use a PASS Sticky Note. The Sticky Note is not a permanent part of the file. For additional information, see GTAM 14510, *Sticky Notes*.

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## 13710 Field Office PASS Cases

To transfer a case to Central Office for processing/review, assemble the physical file according to the specific instructions (see GTAM 13260, Assemble the Physical Case). Physically route only the tax returns, Received Correspondence Index, Received Correspondence, and the Audit Report. Email the GTA Review group to notify Audit Business Support of the physical file's pending transfer.

Route all files, physical and electronic, through Audit Business Support at mailstop D-734. You do not need to send cases using an overnight service unless they are sensitive or high priority because of close Statute of Limitation. However, using regular ground service may delay the receipt by 2-3 days. Do not send no-change overnight.

Use one of the approved courier services (Federal Express, UPS, or Golden State Overnight) for all cases. The United States Postal Service, USPS is no longer an approved courier for Confidential Return/Document delivery. Which service is used depends on your office. The important thing is that it has a tracking system in the event cases are lost or misrouted. Send the physical files to:

AUDIT BUSINESS SUPPORT MAILSTOP D-734 9646 BUTTERFIELD WAY SACRAMENTO, CA 95827-1501

Do not address packages to the attention of Receiving. If you have cases to send to Audit Business Support and other cases/returns for someplace else (i.e. surveys need to go to Data Services and Storage Section) in one package, send them to the street address above and Audit Business Support will sort them and route them to the appropriate places.

When sending any returns through courier service, please include a transmittal letter specifying how many cases/returns are in the package.

Transfer the electronic file to the *Audit Support/GTA Review* group worklist. See GTAM 13280, *Transfer Case/Case Unit to Next Level*, for additional information.

If the case includes a Statute of Limitations waiver, attach the original waiver to the face of the return to which it applies. For cases with pending Statutes, refer to

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the specific procedures (see GTAM 13750, Routing Short Statute of Limitations Cases). Remember to close the case on any non-PASS inventory systems.

**NOTE**: You can track parcels shipped by overnight mail service through the service's web site, or have the Shipping Desk in Service and Supply track the parcel for you [\* \* \* \* \* \* \*]. The overnight mail service has a number of drop boxes. To find the nearest drop box, access their website. Enter your address and their search engine will locate the nearest drop box, list the pick up time, and show you a map. If you choose to use a drop box, contact our Shipping Desk to request the necessary shipping material.

**NOTE:** ((\* \* \*)) = Indicates confidential and/or proprietary information that has been deleted.

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#### 13720 Central Office PASS Cases

Use the right sort bin to route the physical file. The physical file contains:

- 1. Received Correspondence Index, if needed.
- 2. Received Correspondence (includes photocopies, exhibits, and other items).
- 3. Tax Returns.

Generally, you should route all files, physical and electronic, through Audit Business Support (MAILSTOP D-734).

Assemble the case, and refer to your lead/supervisor if required. If the case has a Statute of Limitations waiver, attach the original waiver to the face of its return. For cases with pending Statutes, refer to the procedures (see GTAM 13750, Routing Short Statute of Limitations Cases). You should transfer the physical file when you transfer the electronic file. Failing to do so may cause lost files, expired Statutes, unprocessed Assessments, etc. Email the GTA Review group to let Audit Business Support know that the physical file's transfer is pending.

**NOTE**: Remember to close the case on any non-PASS inventory systems.

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### 13730 Field Offices Non-PASS Cases

The only non-PASS cases worked by the field are those based only upon Revenue Agent Reports.

Complete the *Audit Report* - Form FTB 6430. We use this form as a transmittal document to Central Office. Include your and your audit supervisor's telephone number. Route all cases through Audit Business Support at MAILSTOP D-734. If routing the file through the state messenger service, complete and attach the *Messenger Route Slip* - Form 7000 (see GTAM 4500, *Referrals*, for more information). Email GTA Technical Resource Section to let Audit Business Support know that the physical file's transfer is pending.

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## 13740 Central Office Non-PASS Cases

Route the case through the correct sort bin. Route all cases through Audit Business Support at MAILSTOP D-734. Send an email message to the GTA Review group email to notify Audit Business Support of the pending transfer of the physical file.

Assemble the case and refer to your lead/supervisor, if needed. If the case has a Statute of Limitations waiver, attach the original waiver to the face of it the return it applies to. For cases with short statutes of limitation, refer to the procedures (see GTAM 13750, Routing Short Statute of Limitations Cases). Remember to close the case on any non-PASS inventory systems.

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# 13750 Routing Short Statute of Limitations Cases

Submit all cases to Audit Business Support/Review no fewer than six months before the statute of limitations expires.

See GTAM 10300, Statute of Limitations/Time Limits - GTATRS Review, for more information.

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# 13760 Rush Action Slip

We use the *RUSH Action Slip* - Form FTB 7011 to route cases requiring controlled handling.



Check the "Support Section - Audit Bureau" box.

In the "Mail Notice to Taxpayer Not Later Than:" box, enter the statute date if it expires within six months.

Enter the names of all taxpayers involved. List the key case first.

Enter the corresponding account number (taxpayer identification number, social security number, corporation number, etc.).

In the "Type of Case" section, check the box that applies:

- Statute date Enter statute date if expiring within six months.
- Jeopardy
- Bankruptcy
- Other Check and enter explanation. We usually check this section when there are offsets, cases over one year old, claims, or tax clearance.

Number of Notices - Enter the total number of notices for both PIT and Corp. This includes both Assessments and Overassessments.

Enter the number of Assessments.

Enter the number of Over-assessments.

Consent - Leave blank.

Preparer - Enter your name.

Unit - Enter your payroll unit code.

Date

The RUSH Action Slip. Attach this form to the physical file for rush processing. Write/stamp the word, "PASS," in purple, on the upper right corner of the RUSH Action Slip. See GTAM 13700, Routing the Physical & Electronic Files, for case transfer procedures.

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## 13800 PRESERVATION OF AUDIT FILES (LIM DATING)

GTAM 13810 Revenue Agent Report Procedures

GTAM 13820 Follow - Up Audit Issues

If you plan to preserve a return (and its associated audit workpapers) for an extended period, it must be "LIM Dated."

When a tax return must be kept beyond the normal period, we hold it in the LIM file. This file is kept in Data Services and Storage Section. Returns are destroyed after the normal retention period expires unless the return is LIM'd.

LIM date all tax returns and audit files resulting in an Assessment or Overassessment. If there is no adjustment to the tax year under examination, but there are possible future issues, that return should also be kept in the LIM file.

To LIM-Date a return, write the month (generally October) and year until which the documents should be kept. Write this date in green felt-pen as "*LIM MM/YYYY*" on the top left-hand corner of the return. Choose the date using the facts and circumstances of the examination.

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# **13810 Revenue Agent Report Procedures**

If the taxpayer's returns were filed, but not pulled, for a Revenue Agent Report adjustment, LIM the Report by writing the LIM date in green on the upper left corner of the Report and the Document Locator Number in blue on the upper right corner. If an ELF return, write "*ELF*" after the DLN. Do not attach a copy of the ELF return.

For non-filed returns, LIM the case by writing the LIM date in green at the top of the Revenue Agent Report. If there is no Document Locator Number, file the case in Alpha LIM by the taxpayer's last name.

**NOTE**: For multiple year Revenue Agent Reports, if no returns are pulled for the Revenue Agent Report adjustment, attach the workpapers behind the Report and use the latest year Document Locator Number for which we propose an adjustment.

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# 13820 Follow - Up Audit Issues

Audit adjustments often carry over to future tax years. PASS lets you set up a tickler on a case unit for a future year. You can put a Sticky Note on the case unit asking that the case unit be transferred back to you after the review and notice processes have finished (see GTAM 14510, *Sticky Notes*, for more information).

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## **14000 REVIEW**

The objectives of review are:

- Promote the completion of sustainable quality tax audits,
- Ensure the consistent and accurate application of the tax laws, regulations, policies, and procedures.

GTAM 14100	INFORMAL REVIEW REQUESTS
GTAM 14200	FORMAL REVIEW (PASS)
GTAM 14300	AUDIT SUBJECT TO REVIEW - NOTIFYING TAXPAYER
GTAM 14400	GTA TECHNICAL RESOURCE SECTION (GTA PROGRAM
	REVIEW)
GTAM 14500	REVIEW NOTES

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### 14100 INFORMAL REVIEW REQUESTS

In an informal review, the case status does not change. The reviewer (lead/supervisor) reviews correspondence before mailing. At any stage in the audit, you may request that your supervisor/lead review a letter, a workpaper, or an entire case.

If the reviewer recommends changes, he or she tells you and enters them in the Event Log. After receiving approval, you should print and send the correspondence to the taxpayer.

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## 14200 FORMAL REVIEW (PASS)

Generally, you should complete all case units in a case before a reviewer reviews it. In certain situations, such as a short Statute, a reviewer may look over one or more case units individually.

Upon completing the audit, indicate clearly the audit determination in the Event Log. The system lets you log multiple determinations sequentially, such as a denial of a claim and a notice, on the same case unit for one year.

Assemble the physical file using this manual's instructions (see GTAM 13260, Assemble the Physical Case.

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### 14300 AUDIT SUBJECT TO REVIEW - NOTIFYING TAXPAYER

Sometimes, a reviewer finds that you have not considered enough facts, or that you should further explore some aspect of the case. When the audit is completed, you should tell the taxpayer or representative that a subsequent review might disclose the need for further development or changes to issues already agreed upon by the taxpayer. You are responsible for the accuracy of the audit case and any resulting corrections.

If your report is changed, either by the supervisor or at the reviewer level, you must tell the taxpayer or representative about the revisions.

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# 14400 GTA TECHNICAL RESOURCE SECTION (GTA PROGRAM REVIEW)

The General Tax Audit Technical Resource Section reviews general tax audit cases. The GTA program includes, but is not limited to, audits involving Personal Income Taxpayers (PIT), General Corporations, Estates & Trusts, and Pass Through Entities (PTE) such as S-Corporations, Limited Liability Companies (LLCs), and Partnerships.

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#### **14500 REVIEW NOTES**

GTAM 14510 Sticky Notes

The review notes should provide a better understanding of the case at the next level (i.e., Review, Protest, and Appeals). All review notes should stay with the case.

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# 14510 Sticky Notes

Only one sticky note is allowed per case unit. However, if a sticky note already exists, the user may add additional comments.

Although the user can enter a large amount of text on a sticky note, try to keep the information concise. You may delete a sticky note once it has served its purpose.

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## 15000 SETTLEMENT

California Revenue and Taxation Code section 19442 authorizes us to settle civil tax matters in dispute that are the subject of protests, appeals, or refund claims. The Settlement Bureau negotiates settlements of civil tax matters in dispute, except audits in progress.

The settlement program negotiates settlements of civil tax matters in dispute, consistent with a reasonable evaluation of the costs and risks associated with litigation. The settlement program differs from the Offer in Compromise program. If a taxpayer is seeking only relief from the duty to pay an undisputed tax liability based on an inability to pay, the taxpayer should contact the Offer in Compromise program at (916) 845-4787. For more Settlement information, refer to FTB NOTICE 98-11 - Settlement of Civil Tax Matter Disputes - Updated and Revised Procedures.

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# 16000 POST AUDIT ACTIVITY

GTAM 16100	POST-CORRESPONDENCE
GIAW IUIUU	I OOI-COMMENCE

GTAM 16200 PROTESTS GTAM 16300 CLAIMS

GTAM 16400 GUIDELINES FOR PREVIOUSLY AUDITED TAX YEARS

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#### 16100 POST-CORRESPONDENCE

You must consider correspondence from a taxpayer or representative after a notice is issued or a case is closed. When you receive correspondence, review it to decide what course of action to take:

- Is it a protest letter? See GTAM 16200, *Protests*.
- Is it an untimely protest? See GTAM 16210, Valid Protest.
- Is it a claim? See GTAM 16300, Claims.

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#### **16200 PROTESTS**

GTAM 16210	Valid Protest
GTAM 16211	Logging Protests
GTAM 16212	Suspended Corporations
GTAM 16220	Paid Protests
GTAM 16230	Taxpayers' Bill of Rights - Action on Protests
GTAM 16240	Notice of Action on Protests
GTAM 16241	Notice of Action - Jeopardy Assessment
GTAM 16250	Notice of Revision
GTAM 16260	Innocent Spouse
GTAM 16261	Non-Liable Spouse - Innocent Spouse Transaction
GTAM 16270	Protest Appeals to the Board of Equalization
GTAM 16280	Suit for Refund - Superior Court
GTAM 16290	Conversion of an Assessment into an Overassessment

A protest gives the taxpayer the opportunity to disagree with a proposed deficiency assessment.

Protests are categorized as either *docketed* or *undocketed*. Protests classified as docketed have more significant legal issues and require the Legal department's advice. The Protest Unit can resolve undocketed protests. Most protests are undocketed.

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## **16210 Valid Protest**

According to CR&TC section 19041, the taxpayer may file a *written* protest with us against the proposed deficiency assessment within 60 days of the date of each notice of proposed deficiency assessment, specifying in the protest the grounds upon which it is based. The Notice of Proposed Assessment tells how to file a protest. We include the *NPA Insert* –(Form FTB 7275) with the Notice of Proposed Assessment. This form explains the protest procedures and tells the taxpayer about our Taxpayer Advocate (see GTAM 9900, *Taxpayer Advocate*, *Public Affairs*, & *Legislative Services Referrals*, for more Taxpayer Advocate Information).

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# **16211 Logging Protests**

A Protest Unit manager, supervisor, or designee reviews all cases to decide if the protest unit will handle it, return it to the originating unit for further work, or refer it to the Legal department.

When the Protest Unit gets the protest, it sends a copy of the original protest letter to the auditor who conducted the examination. This allows you to respond to issues in the letter, and to provide any information that may help the hearing officer resolving the case.

Cases that are not fully developed because notices were issued due to a failure to furnish information or an impending statute of limitations may be returned to the original unit for further development or analysis. If this occurs, Hearing Officers are available to discuss the case. Upon completion, you should return the case to the Protest Unit with a cover memo and the revised analysis/narrative report for final determination and processing.

In addition, the protest unit will contact you to discuss final protest determinations that involve:

- A material revision/withdrawal,
- A revision/withdrawal that involves audit practice considerations, regardless of the amount,
- · Revisions/withdrawals that involve significant gray issues, or
- Revisions/withdrawals on cases where you have requested notification of the final determination.

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# **16212 Suspended Corporations**

A suspended corporation has no privileges or rights. Consequently, it cannot file a protest while it is suspended. The taxpayer must revive to good standing within the protest period to have a timely protest (California Revenue & Taxation Code section 23301). A suspended corporation is one, which has had its corporate rights, privileges, and powers suspended by the FTB or the Office of the Secretary of State (SOS). A corporation may be suspended for failing to file tax returns, pay taxes, pay assessments, or file the necessary documents with the SOS.

To verify a corporation's status, check BETS.

Occasionally a suspended corporation may have an overpayment on one tax year and a balance due on another year. In these situations we may apply the overpayment to the balance due in order to facilitate a reviver of the corporation. These are generally handled by the Collection Bureau. On a case-by-case basis, the Collection Bureau may refer questions to the GTA Collection Liaison for an informal review of the issue. If the liaison can easily determine based on the information available, that an overpayment does exist, the collection representative may credit the overpayment against a balance due in accordance with CR&TC section 23305.

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### 16220 Paid Protests

CR&TC section 19335 says that payment of the tax protested, made with or after the filing of a protest, constitutes a claim for refund (see GTAM 16300, *Claims*, for more information). We do not treat an unidentified payment posted as a miscellaneous payment as a claim for refund unless the taxpayer intended that payment be made under protest. To be treated as a claim for refund, the taxpayer must properly identify the payment's purpose. If a miscellaneous payment is subsequently identified as a deficiency payment made under protest, we treat it as a claim for refund if it otherwise meets the requirements.

To protect the taxpayer's protest rights, we record these cases as formal claims but treat them like any other protest and do not finalize them until we have made the determination and issued a Notice of Action.

If you are working a Protest case and the taxpayer pays the assessments, you should treat this case unit as a *Claim* type case on PASS. Change the case unit type to "*Claim*" type and complete all information on the Claim General Information tab including the *Paid Protest Date* field.

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# 16230 Taxpayers' Bill of Rights - Action on Protests

Pursuant to the Taxpayers' Bill of Rights (CR&TC section 21010), we have established a 33-month or shorter period in which we evaluate the merits of a protest and any included claims for refund, conduct a hearing if requested, and issue a notice of action.

This period begins on the date the taxpayer files a protest to the Assessment, and expires when the Notice of Action is issued. See FTB Notice 99-1 for more information.

The Taxpayers' Bill of Rights (CR&TC section 21011) also provides for hearings before our audit staff or legal staff. Hearing procedures require that:

- We hold hearings at a reasonable time, at a Franchise Tax Board office that is convenient to the taxpayer, when possible.
- We may only record hearings if we give prior notice to the taxpayer. The taxpayer is entitled to a copy of the recording.
- We inform taxpayers before any hearing that they have the right to be represented by their designated agent at the hearing.

We must act on every protest. Even if a taxpayer pays the tax or penalty in full when filing a protest, or at any time before we take final action, the taxpayer is entitled to full protest rights. We act upon all protests by issuing a Notice of Action. For more information, see GTAM 16240, *Notice of Action on Protests*, and GTAM 16250, *Notice of Revision*.

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## **16240 Notice of Action on Protests**

We must act on all protests by affirming, revising, or withdrawing the Notice of Proposed Assessment. Before any action, the hearing officer must send a letter to the taxpayer explaining why we are taking the action. If we get no more information, we then send a formal notice to the taxpayer by issuing a Notice of Action. A Notice of Action affirms, revises, or withdraws the Notice of Proposed Assessment.

We issue a Notice of Action on every Notice of Proposed Assessment that *the taxpayer has formally protested*. A Notice of Action may never increase the amount of tax or penalty on the Notice of Proposed Assessment.

If the taxpayer disagrees with the protest determination, the taxpayer may appeal to the State Board of Equalization or pay the deficiency and file a claim for refund. See GTAM 16270, *Protest Appeals to the Board of Equalization* and GTAM 16300, *Claims*, for more information.

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# 16241 Notice of Action - Jeopardy Assessment

We issue a *Notice of Action*, (Form FTB 5933 or Form FTB 5934) on protested jeopardy assessments. We use Form FTB 5933 for corporations in good standing and for Personal Income Tax taxpayers, when we revise, affirm, or withdraw the jeopardy. We use Form FTB 5934 for suspended corporations.

If taxpayers disagree with the action, they may file an appeal with the Board of Equalization within 30 days of the date of the Notice of Action. However, if the taxpayer is a suspended corporation, the corporation must first regain good standing to file an appeal. See GTAM 13240.3, *Jeopardy Assessments*, for more information.

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## 16250 Notice of Revision

We often get responses to a Notice of Proposed Assessment that *do not* qualify as protests. This response may agree to an assessment, explain an error in a calculation, or state that the taxpayer is unable to pay.

We handle a response that raises an objection to a Notice of Proposed Assessment adjustment but which *does not* constitute a protest by issuing a Notice of Revision. A Notice of Revision differs from a Notice of Action-Revision. A Notice of Action-Revision is issued to revise a Notice of Proposed Assessment that was timely protested.

We must answer the letter even If no adjustment to the Notice of Proposed Assessment is warranted. The reply should restate audit's position and explain the Notice of Proposed Assessment will become final 60 days from the date of issuance unless a protest is filed within that time.

If a revision is needed, it finalizes at the expiration of the original 60-day period. However, the notice remains subject to protest within that period.

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## **16260 Innocent Spouse**

Under certain circumstances, an innocent spouse can seek relief from a joint tax liability.

- 1. CR&TC section 18533 (formerly 18402.9) Relief from additional tax.
- 2. <u>CR&TC section 19006(b) (formerly 18555(b))</u> Relief by court order, and tax clearance revision certificate.
- 3. CR&TC section 19006(c) (formerly 18555(c)) Relief from return tax.

In general, audit will only deal with number one above. There are three subsections of CR&TC section 18533:

- 18533(b) Innocent Spouse Relief.
- 18533(c) Separation of Liability
- 18533(f) Equitable Relief.

The specific requirements for each subsection vary.

Relief under the last one is for tax on a return or an amended return, and is generally claimed during the collection process.

Relief is allowed if the taxpayer could otherwise timely protest, appeal, file a refund claim, or file suit.

In general, California Revenue and Taxation Code section 18533 authorizes us to relieve a spouse from an additional tax assessment when the following requirements are met:

- 1. A joint return was filed for the year for which relief is requested.
- 2. The incorrect tax deductions or the unreported income is because of the actions of the other or former spouse.
- 3. The taxpayer requesting relief had no knowledge or reason to know about the incorrect tax deductions or unreported income.
- 4. The taxpayer requesting relief did not earn, manage, or control the unreported income, and was not responsible for the incorrect tax deductions.
- 5. The taxpayer requesting the relief did not receive a significant benefit from the incorrect tax deductions or unreported income.
- 6. Statute must be open under a statute code section for the year relief is sought.

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We must notify the other spouse (or non-electing spouse) that the spouse has requested relief of liability. We must give them the opportunity to participate in the determination.

If a spouse substantiates innocent spouse, then that spouse is relieved of liability for that portion of the tax. The joint Assessment must be affirmed, a Non-Liable Spouse (full) transaction must be completed, and a letter sent to the innocent spouse confirming the relief (see GTAM 16261, *Non-Liable Spouse - Innocent Spouse Transaction*).

It is possible for the electing spouse to be partially non-liable. Affirm the joint assessment, complete a Non-Liable Spouse (part) transaction, and send a letter and allocation schedule to the innocent spouse confirming the portion which they are still liable for.

**NOTE**: If the innocent spouse issue emerges after the Assessment has gone final, refer the case to the Collection Bureau Innocent Spouse Unit, Mail Stop H-080.

If relief of liability is denied, affirm the joint assessment. Include reasons for the denial in the assessment.

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# **16261 Non-Liable Spouse - Innocent Spouse Transaction**

For the fully or partially non-liable spouse, follow these procedures:



- Issue a Notice of Action Affirmation (see GTAM 16240, Notice of Action (NOA) on Protests, for additional information). If there are other issues to adjust, issue a Notice of Action Revision. If innocent spouse is the only issue, send a letter to the innocent spouse. The letter should state that innocent spouse relief is granted (in full or partially) under California Revenue and Taxation Code section 18533 (and the applicable subsection) and that we will send an NOA-Affirmation/Revision (whichever is applicable). The letter should also explain that the innocent spouse will receive the first billing notice.
- Complete a Technical Support Request Form FTB 7053 requesting an account status change on TI (Non-Liable Spouse – (Full/Part) Transaction) for the applicable spouse. Attach the Technical Support Request to the face of the return, and route the file to Audit Business Support.
- Mail a copy of the revised or affirmed Notice of Proposed Assessment to each spouse.
- Be sure to include a comment on the Taxpayer Information system indicating the relief. Give the tax year and code section under which relief was allowed. If partial relief is granted, state the amount of the tax, penalty and interest owed by the electing spouse.

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# 16270 Protest Appeals to the Board of Equalization

The taxpayer has 30 days after the mailing date of the Notice of Action to appeal our action upon protest to the State Board of Equalization. The appeal must be in writing. (CR&TC section 19045) If no appeal is filed within the 30-day period, the assessment becomes final and the deficiency assessed is due and payable within 10 days (for taxable years through December 31, 1997), or within 15 days (for taxable years beginning on or after January 1, 1998), from the date of the notice and demand (CR&TC section 19049). If full payment is received within the 10 or 15 days, interest is waived for that 10 or 15 day period.

If an appeal is filed, both the taxpayer and we have the chance to provide more information.

Once the Board of Equalization has evaluated the facts and rendered a decision, the law allows for a rehearing if requested by either party within 30 days of the decision. If no rehearing petition is filed, the Board's decision becomes final 30 days after it is rendered. If a rehearing petition is filed, the Board's decision on the petition becomes final 30 days from the time the Board issues its opinion on the petition. (CR&TC section 19048).

Once the Board of Equalization renders a decision, it is final and binding on us, but not on the taxpayer. However, we can petition for a rehearing.

See GTAM 16360, *Denial of Claim*, for information about appeals from the denial of a claim for refund.

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# 16280 Suit for Refund - Superior Court

Taxpayers can appeal to the State Board of Equalization or sue directly in Superior Court after a claim or appeal of a protest is denied. However, with the exception for an issue of residency, before they can file suit in California Superior Court, they must pay the tax, penalty, and interest. They can act to recover payment in Superior Court within 90 days after:

- The date the Board of Equalization mails the final notice of action, or
- The date we mail our notice of action on the claim for refund.

Either the taxpayer or we can appeal a Superior Court decision to the California Appellate Court or the California Supreme Court, and ultimately to the U.S. Supreme Court.

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## 16290 Conversion of an Assessment into an Overassessment

Where both positive adjustments increasing income and negative adjustments decreasing income result in a Notice of Proposed Assessment, and the Notice is subsequently withdrawn and the negative adjustments sustained, resulting in an overpayment of tax, we treat the Assessment as an Overassessment.

We must issue a Notice of Proposed Assessment before the statute of limitations expires for issuing an Overassessment (as defined in CR&TC section 19306). If we issue an Assessment is issued after the statute of limitations expires for issuing an Overassessment, the negative adjustments noted on the Notice of Proposed Assessment can only offset the deficiency related to the positive adjustments.

We cannot introduce new issues into the computation of the overpayment that increase the overpayment, unless the statute of limitations is open for filing a claim for refund or issuing an additional Notice of Proposed Overassessment. In addition, negative income adjustments raised by the taxpayer during audit but not in the income adjustments resulting in the Assessment, if subsequently allowed, may not increase the overpayment unless a timely claim for refund was filed for those issues.

An overpayment from a Notice of Proposed Overassessment may be increased only in the same circumstances that allow the increase in an overpayment arising from a claim for refund. That is, the amount of the additional overpayment identified after the statute of limitations for filing a claim or issuing an Overassessment expires must be directly related to the respective issues resulting in the Overassessment.

The statute of limitations applies separately for each taxpayer in a combined report. That is, for the time that deficiency and claim for refund or Notice of Proposed Overassessment statutes differ, an Assessment subsequently treated as an Overassessment may not offset other combined report member's tax liability if the statute of limitations expired for issuing an Overassessment when we issued the Assessment.

Taxpayers do not have appeal rights to our final action on an Overassessment that was started by the department, not by a claim for refund.

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### **16300 CLAIMS**

GTAM 16310	Valid Claim
GTAM 16311	Conversion Of Assessment To A Claim For Refund
GTAM 16320	Corporation Claim for Refund
GTAM 16321	Closing Forms - Corp. Claims
GTAM 16330	Personal Income Tax (PIT) Claim for Refund
GTAM 16331	Closing Forms - PIT Claims
GTAM 16340	Multiple Issue Claims
GTAM 16341	Accounting Instructions/Corp Form FTB 6213A
GTAM 16350	Special Claim Instructions
GTAM 16351	Case Type: Claim v. Audit
GTAM 16360	Denial of Claim
GTAM 16370	Protective Claims

A claim for refund lets taxpayers request a credit against a current or prior year tax liability. PIT and Corporation claims may be referred to audit for review. The GTA Central Office Audit section will decide to process claims by correspondence or in the field. Once a claim is refunded, it is a "paid amended return".

CR&TC section 19331 provides that if a claim for refund is not resolved within six months after the **claim** is filed with us, the taxpayer may deem the claim denied and file an appeal with the California State Board of Equalization.

**NOTE:** ((\* \* \*)) = Indicates confidential and/or proprietary information that has been deleted.

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### 16310 Valid Claim

Effective January 1, 2000, in general, no credit or refund is allowed after the later of:

- The period ending four years from the date the return was filed, if filed within the extension time prescribed by Section 18567 or 18604,
- Four years from the last day prescribed for filing the return, without regard to filing extensions, or
- One year from the date of the overpayment, unless the taxpayer files a claim before that period expires, or unless we allow a credit or mail a notice of proposed overpayment on a preprinted form that we prescribe before the period expires.

See CR&TC section 19306 for more information.

A valid claim must:

- Be written
- State the reason for the claim
- Be signed by the taxpayers or their authorized representative
- Tax must be paid in full (CR&TC section 19322).

Interest does not have to be paid. Any claim not meeting this criterion is an "invalid claim." **NOTE**: If a taxpayer is making installment payments on a tax liability and filing a claim for refund with each installment, the claims are not considered valid because the underlying tax is not paid in full. See FTB Notice 97-4, and FTB Notice 97-8.

If a claim is invalid, we send a letter to the taxpayer explaining why. This is not a Denial Letter. The taxpayer has no appeal rights. Invalid claims due to lack of full payment or other deficiencies based upon CR&TC section 19322 are *rejected without appeal rights*.

**NOTE**: Otherwise valid claims that are *untimely* are *denied with appeal rights*, so that the taxpayer can argue the Statute issue.

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## 16311 Conversion Of Assessment To A Claim For Refund

If a taxpayer pays additional Assessment tax and penalty, if any, the protest or appeal converts to a claim for refund under CR&TC section 19335. However, we treat the Notice of Proposed Assessment as a protest and the additional tax does not finalize until action on the claim for refund is final.

If the additional Assessment is cancelled when we take final action on the claim for refund, and the negative adjustments on the Assessment result in an overpayment, we treat the notice as if the Notice of Proposed Assessment had not turned into a claim for refund.

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# 16320 Corporation Claim for Refund

GTAM 16321 Closing Forms – Corp. Claims

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# 16321 Closing Forms - Corp. Claims

#### CORP. CLAIMS

Audit action taken on claim:	Use the following form:
Increase the claim filed	FTB 6830-BCT for the increase over the
	original return filed, or the latest return
	on BETS.
Partial Denial	FTB 6830-BCT for the amount allowed.
	Enclose the FTB 1087.
Allow in Full	FTB 6638 for the amount claimed.
Deny full claim	FTB 6638 for the amount claimed.
	Enclose the FTB 1087.
Deny full claim and assess	FTB 6638 for the amount claimed,
additional tax	Enclose the FTB 1087. FTB 6830-BCT
	for the additional tax.

The AUDITOR'S RECOMMENDATION FORMAL CLAIMS – Use Form FTB 6638 when a corporation claim for refund is either allowed or denied in full. The instructions below apply to the AUDITOR'S RECOMMENDATION FORMAL CLAIMS - Form FTB 6638:

## Form FTB 6638 Instructions

- 1. **Taxpayer** Name of the corporation
- 2. **Taxpayer ID** The corporate number assigned by the state
- 3. **Income Year(s)**: Enter the years
- 4. **Cc(s)** Indicate the name and address where copies should be sent.
- 5. **Reviewer** The reviewer's initials
- 6. **Created By** Name of the maker
- 7. Last Modified Date Date created or last changed
- 8. **Review Date** Reviewer enters the review date
- 9. **Deny Claim For Refund For.** Check the box if denied in full. Explain the denial in the "*Explanation*" section. Show the taxable years ending (MM/YYYY), claim number if applicable, and the dollar amount of the denial.
- 10. **Allow Claim For Refund For**: Check the box if allowed in full. For each year allowed in full, list the taxable years (MM/YYYY), claim number if applicable, dollar amount, revenue code, and check the "Notice Related" or "Notice Unrelated" box if applicable.
- 11. Explanation
  - **Denied with no other action** Explanation paragraph 60001 will

automatically be typed. Be sure to include any other explanations such as reference to any Informal Denial Letters that may have been previously sent to the taxpayers. An Informal Denial Letter is like a position letter. See GTAM 9500, *Position Letter/Audit Issue Presentation (Explanation of Adjustments)*, for more information.

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- **Denial with NPA on same year** Enter paragraph number 50625.
- Denial with NPA on same issue in a different year Enter paragraph number 50621 with an explanation, and a note stating, "Do not type until related NPA on taxable year MM/YYYY goes final." Refer to any Informal Denial Letters that may have been previously sent to the taxpayers. An Informal Denial Letter is like a position letter. See GTAM 9500, Position Letter/Audit Issue Presentation (Explanation of Adjustments), for more information.
- Allowed in full Explanation paragraphs 60014 and 60015 will automatically be typed. If another paragraph is desired, write it in this area.
- Claim allowed in full, and an NPA is greater than the claim Check the deny claim box and enter paragraph 50625. Complete
  FTB 6830-BCT (NPA Worksheet).
- 12. **N/C PAR 53400 (23X)** Check the box if applicable and enter the taxable years.

**NOTE**: Print a hard copy of the *AUDITOR'S RECOMMENDATION FORMAL CLAIMS* - Form FTB 6638 and attach to the face of the tax return for processing. Write/stamp the word, "PASS" in purple, on the upper right corner of the form.

**NOTE**: The allowance or denial of a claim in full refers to the *amount* of the claim, *not* the issue. So if the claim issue is allowed, but another issue is adjusted, resulting in no refund due or the issuance of a Notice of Proposed Assessment, the claim is considered denied in full.

If the claim is denied in full and additional tax is due, complete the *AUDITOR'S RECOMMENDATION FORMAL CLAIMS* - Form FTB 6638 with the, "*Deny Claim For Refund For*" box checked. Include the dollar amount, year, and claim number, if applicable. In addition, complete the *BETS NPA Worksheet* - Form FTB 6830-BCT. We hold Form FTB 6638 until the Notice has gone final. This prevents the taxpayer from protesting the Notice and having to file an appeal on the denied claim.

If a claim is increased or decreased, use the *BETS NPA Worksheet*. The previously assessed and corresponding starting income should be from the latest

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return filed (per BETS). Use the right Notice of Proposed Assessment paragraph to explain the increase or decrease.

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# 16330 Personal Income Tax (PIT) Claim for Refund

See GTAM 16331 Closing Forms - PIT Claims

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# 16331 Closing Forms - PIT Claims

## **PIT CLAIMS**

Audit action taken on claim: Use the following form:

Increase the claim filed FTB 6846 (O/A sheet) for amount of the

increase over the original return filed, or

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latest return on TI. Complete FTB

6848A.

Partial Denial Denial Denial Letter (Form FTB 1502 within

PASS) and Form FTB 1084 (Appeal Procedures) enclosed. FTB 6846 (O/A sheet) for the amount allowed. Complete FTB 6848A. **NOTE**: If within 6 months of the filing of the claim, complete the

goldenrod half-sheet and FTB 6846 (O/A

sheet).

Allow in Full If within 6 months of the filing of the

claim, complete the goldenrod half-sheet and FTB 6848A. Otherwise, complete FTB 6846 (O/A sheet) for the amount claimed and complete FTB 6848A.

Deny full claim If within 6 months of the filing of the

claim, fill out goldenrod half-sheet and 6848A. Denial Letter (Form FTB 1502 within PASS) and Form FTB 1084 (Appeal Procedures) enclosed.

Complete FTB 6848A.

Deny full claim and assess

additional tax

Denial Letter (Form FTB 1502 within PASS) and Form FTB 1084 (Appeal Procedures) enclosed. FTB 6831 for

additional tax. Complete FTB 6848A.

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# **16340 Multiple Issue Claims**

Often, a claim for refund involves multiple issues and both positive and negative changes. If audit proposes to change the claim, it is important to issue the correct notice.

For example, a taxpayer files a claim for refund, based upon multiple issues that are both positive and negative. Issue #1 is based upon a Revenue Agent Report adjustment. The additional tax resulting from the Report issue is \$100. Issue #2 is a California only adjustment. The tax effect of the California only adjustment is \$<200>. The net tax effect is a claim for refund of \$<100>.

If the Report issue is allowed and the California only adjustment is denied, we issue a Notice of Tax Due for the Report issue instead of a Notice of Proposed Assessment. We would issue an Assessment if we got the Report from the taxpayer *without* an amended return. The Notice of Tax Due gives the taxpayer *no* appeal rights, since filing the amended return makes the Report issue a *self-assessed* tax.

We also issue a Claim Denial Letter for the California only adjustment. The Claim Denial Letter (with the *Appeal Procedures* - Form FTB 1084) gives the taxpayer appeal rights.

For corporate taxpayers, we issue the Notice of Tax Due by preparing the *Accounting Instructions/Corp.* - Form FTB 6213A (see GTAM 16341, *Accounting Instructions/Corp.* – Form FTB 6213A).

For individual taxpayers, we issue the Notice of Tax Due by preparing the *Technical Support Request* - Form FTB 7053.

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# 16341 Accounting Instructions/Corp. - Form FTB 6213A

Use the *Accounting Instructions/Corp.* - Form FTB 6213A to create a Notice of Tax Due. This notice gives the taxpayer *no* appeal rights. For an example, see GTAM 16340, *Multiple Issue Claims*.

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# **16350 SPECIAL CLAIM INSTRUCTIONS**

GTAM 16351 Case Type: Claim v. Audit

GTAM 16360 Denial of Claim GTAM 16370 Protective Claim

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16351 Case Type: Claim v. Audit

<u>Scenario #1</u> - An audit begins in tax year 1995, and two months later the taxpayer files a claim for refund for 1995. Change the case type to "*Claim*" and make the claim the primary case unit.

<u>Scenario #2</u> – We get a claim for tax years 1992 and 1993. We create case units manually for these claims. The case type is "*Claim*." We later open tax years 1994 and 1995 for the same issue, and create the case units manually. The case type for these two years is "*Audit*." The primary case unit is the latest year claim. The workload codes for each case unit correspond to their respective case types. Because you have four case units with two different workload codes, charge all claim time to the primary case unit (the latest year claim). Charge all audit time to the latest year's audit case unit (1995).

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## 16360 Denial of Claim

If we deny or partially deny a claim for refund, the taxpayer has 90 days after we mail the notice of denial to file an appeal in writing with the Board of Equalization or bring action in California Superior Court.

In addition, if we fail to act on the claim within six months, the taxpayer can deem the claim denied, and file an appeal with the Board of Equalization or bring action in California Superior Court as if we formally denied the claim.

Once the Board of Equalization renders a decision, it is final and binding on us, but not on the taxpayer.

Either the taxpayer or we can appeal a Superior Court decision to the California Appellate Court or the California Supreme Court, and ultimately to the U.S. Supreme Court.

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## **16370 Protective Claims**

When the IRS or another state is auditing a taxpayer or an entity that the taxpayer has invested in, tax years may sometimes be overpaid. In these cases, it is common for a taxpayer to file a "*Protective Claim*." The protective claim may state it is for "\$1.00 or more", and generally contain language that asks us to withhold action on their claim until they have settled the IRS audit, the other state, or agency with whom litigation is pending. Claims involving pending federal determinations stay with the *RAR Unit - Pending Federal*. We refer all other protective claims to GTA Central Office. Some protective claims are Other State Tax Credit issues where the taxpayer is awaiting resolution of a refund, etc. from another state agency.



- Refer non-Revenue Agent Report protective claims to GTA Central Office.
- We examine the protective claim to determine if it is valid (pending resolution of adjustments to income by an other state taxing agency).
   See GTAM 16310, Valid Claim, for more information.
- Route valid protective claims to the Audit Business Support Section for holding.
- Audit Business Support sends taxpayers a letter informing them that action on the claim is pending the other state's resolution.

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## 16400 GUIDELINES FOR PREVIOUSLY AUDITED TAX YEARS

GTAM 16410 Exceptions to the general rules - Previously audited tax years

GTAM 16420 Audit Defined

GTAM 16421 Non – Audit Contacts

In general, you should not reopen audited years. However, there are exceptions, such as a material change in fact.

We have the statutory authority to examine any books, papers, or other data to confirm the accuracy of any return. There is no statutory limit to the number of audits per return. However, we should not subject taxpayers to unnecessary audits. Therefore, reopen audited years only in the following limited circumstances:

- Misrepresentation of a Material Fact There is misrepresentation of a
  material fact, evidence of fraud, malfeasance, collusion, or concealment.
  This does not include development of a new audit perspective.
  Discoveries of information or issues missed by the prior audit are not
  misrepresentations of facts unless it can be demonstrated that the
  taxpayer deliberately withheld requested information.
- A Clearly Defined Substantial Error Based on an Established FTB Position

   The prior closing involved a clearly defined substantial error based on an established Franchise Tax Board position at the time of the previous audit.
   An error is clearly defined if it is readily apparent.

Substantial refers to the dollar amount of tax that would not be assessed if we did not reopen the case. "Substantial" is determined on a case-by-case basis, considering all facts and circumstances relating to materiality. Generally, an error may be substantial if the dollar amount of the tax not assessed exceeds the greater of \$10,000 or 5% of the tax assessed (IRM Section 4023.5) on the original return or determined during the previous audit. Use your judgment before relying upon the dollar amount.

An established Franchise Tax Board position is one that is clear (not in the developmental stage) at the time of the previous audit. Examples of an established Franchise Tax Board position are an Audit Branch Procedure Statement, a position published in an Audit Program Report, a position

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taken in a Franchise Tax Board Notice, or a finding in a Legal Ruling (presuming they were not superseded).

• A Serious Administrative Omission - A serious administrative omission occurs when failure to reopen a closed audit could (1) Result in serious criticism of our tax law administration; (2) Establish a precedent that seriously hampers future attempts to take corrective action; or (3) Result in inconsistent treatment of similarly situated taxpayers.

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## 16410 Exceptions to the general rules - Previously audited tax years

Exceptions to the general rules for previously audited tax years, as discussed above (see GTAM 16400, *Guidelines for Previously Audited Tax Years*) include the following situations:

## Pass-Through Entity Audits

Pass-through entities and their partners/shareholders/members are distinct taxpayers. Therefore, we issue their audit determinations separately. A determination issued to a pass-through entity because of an entity level examination is not the same as an audit of the owners and vice-versa.

A flow through adjustment from a pass-through entity level examination is not an audit of the investors' returns on other issues. To the extent investor level issues, such as basis determination, are included in the entity examination, an audit was conducted on the investor's return, and the investor's return is subject to the same reopening criteria as other audits.

An audit of the books and records of a pass-through entity of which a taxpayer is an owner does not constitute reopening the audit of the owner's return, even though the owner's return was previously examined for other issues.

## Carryover Years

We may audit a credit carryover, net operating loss carryover, or similar carryover in the year the carryover is used even though the year in which the credit or loss originated is not within an open statute of limitations. To the extent the carryover is incorrectly reported, we should not allow it to reduce tax in the current audit year or future years.

### Closing Agreements

If we have reached an agreement with the taxpayer about the treatment of certain items, we should adhere to this agreement for all tax years specifically stated in the closing agreement unless there is a material difference in facts or there a change in the relevant statute, regulations, or case law.

#### Surveys

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When a return is classified as a survey, it indicates that the return was not selected for audit. An audit after a survey does not constitute reopening of an audited year.

# Post Notice of Proposed Assessment Development

After we issue a proposed assessment or an over-assessment, the audit may be resolved with further factual development or law application. This may involve a hearing officer or settlement or appeal attorney. Gathering facts related to the assessment does not constitute reopening the audit of the return.

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## 16420 Audit Defined

In general, any inspection of relevant books, papers, or other data to confirm the accuracy of any return is an audit. An audit is considered closed when we notify the taxpayer in writing of the final determination after review, after the taxpayer has exhausted all administrative remedies, including protest, claim, appeal, and settlement.

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### 16421 Non - Audit Contacts

We may contact taxpayers because of the return processing, verification, and correction program. For purposes of these procedures, the following are examples of contacts that are *not* considered audits:

#### Math Errors

A contact with a taxpayer to correct mathematical or clerical errors is not considered an audit. These corrections occur outside of the Compliance Programs and Administration Branch.

## **Return Information Notice**

A contact with a taxpayer to determine the correct tax and applicable payments, or any other adjustment of an unallowable item, for which we issue a Notice, is not an audit. Examples of existing programs are:

- Verifying claimed withholding;
- Verifying/reconciling/correcting estimate payments;
- · Recomputing tax liability using correct rates or tables;
- Adjusting for penalties payable upon notice or demand; and
- Looking for refund fraud.

## Non-filers

Contacting taxpayers asking them to file a return where none has been filed is not an audit. If, when the return is filed, we examine books and records to verify the correctness of that return, we have performed an audit.

## Information that Must Be Filed

Contacting a taxpayer, including information return filers such as partnerships, S corporations, limited liability companies, and fiduciaries, to request information that must normally be filed or included with the return is not an audit.

## **Preliminary Information Requests**

Contacting a taxpayer to get preliminary information to perform test checks while scoping is not an audit *if* we tell the taxpayer clearly that we want the information to determine whether or not to pursue an audit.

## Revenue Agent Reports

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A contact verifying the correctness of a final federal determination or applying final federal determinations is not an audit. This includes:

- The Automated Underreporter program (CP 2000);
- Resolution of voluntary Revenue Agent Reports; and
- Application of non-voluntary Revenue Agent Reports from the IRS.

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## 17000 TIMEKEEPING

Track time spent on PASS case units using the PASS Desktop. Record all hours spent on direct, indirect, and non-PASS activities/tasks daily for accurate time reporting.

Any discrepancies between the time on the Time Management Reports and the state's payroll calendar hours for the month must be adjusted and reported according to each unit's timekeeping procedures.

At the end of every month, each audit staff member must report:

- 1. Direct time charged by workload code.
- 2. Indirect time charged by activity.
- 3. Production completed during the month.

**NOTE**: If hours are incorrectly recorded in PASS for the pay period and the user cannot modify the time until after the Time Management extract is run, it is important to correct it in PASS as soon as possible.

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## **18000 REPORTS**

PASS provides standard reports that are designed to meet various users' needs. Some reports are available to supervisors and program managers, while others are also available to staff for managing their PASS workloads. These reports provide statistical information on PASS audit workloads. The accuracy of the reports is dependent on the information recorded in case units when the reports are run. If case units are not checked-in when reports are run, they will not be in the reports. It is critical to check in all case units and record all time before the scheduled monthly run, which is typically the last day of the State pay period.

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# 19000 REQUESTING A PASS LAPTOP

Contact the ABTS Help Desk.

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# 20000 GTA PROGRAM PROCEDURES

GTAM 20100	GTA BANKRUPTCY PROCEDURES
GTAM 20200	C CORPORATION PROGRAM
GTAM 20300	ESTATES AND TRUSTS
GTAM 20400	CREDITS
GTAM 20500	PENALTIES
GTAM 20600	INTEREST
GTAM 20700	FEDERAL AUDITS
GTAM 20800	DISASTER ACTION PLAN - COMPLIANCE PROGRAMS
	AND ADMINISTRATION BRANCH

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#### 20100 GTA BANKRUPTCY PROCEDURES

GTAM 20110	Bar Date
GTAM 20111	Automatic Stay
GTAM 20112	Petition Date Before 10/22/94
GTAM 20113	Petition Date On or After 10/22/94
GTAM 20120	The Bankruptcy Unit
GTAM 20121	Identifying Taxpayers Seeking Bankruptcy Protection
GTAM 20122	Petition Date and Other Information
GTAM 20130	Additional Information and Training
GTAM 20140	Audit Bankruptcy Procedures
GTAM 20141	Procedures when the Petition Date is Before 10/22/94
GTAM 20142	Procedures When the Petition Date is On or After 10/22/94
GTAM 20143	ADF-B Procedures
GTAM 20150	Prompt Audit Requests
GTAM 20160	Statute of Limitations
GTAM 20170	Enterprise-Wide Bankruptcy System
GTAM 20180	Bankruptcy - Case Review
GTAM 20181	Review for PIT Bankruptcy

If you have questions that cannot be answered from the following procedures, please contact the GTA Bankruptcy Liaison at \* \* \* \* \* \* . If you are from the Federal/State Examination Section, please contact the Fed/State Bankruptcy Liaison at \* \* \* \* \* \* \* \*.

Audits involving taxpayers that have filed for bankruptcy protection need special handling. There are two principal concerns when a taxpayer files a bankruptcy petition:

- Issue all assessments and file all bankruptcy claims before the "Bar Date."
- Protect the taxpayer's rights with regard to the "Automatic Stay."

**NOTE:** ((\* \* \*)) = Indicates confidential and/or proprietary information that has been deleted.

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### 20110 Bar Date

Bankruptcy laws require that we file bankruptcy claims before the bar date. The bar date is set by the court as the last day to file claims in a bankruptcy case. Generally, the bar date is 120 days after the filing of the bankruptcy petition, but the period between filing and bar date may vary. If a claim is not filed timely, we may be barred from collecting current taxes and issuing additional assessments for discharged years. For instructions to identify the bar date from a petition, see GTAM 20122. *Petition Date and Other Information*.

For audit purposes, we are most concerned with the bar date, since we consider this the new statute of limitations. It is critical to know the bar date or if one is set. If the bar date is not available in the file, the collections department can get the bar date or find out if a date is set. Consult your lead or the Audit/Bankruptcy Liaison if you need information about the bar date. You may want to call the automatic bankruptcy system. This system gives you any information pertaining to the case, including the bar date and bankruptcy chapter. Before you call, have taxpayer's social security number readily available. Automatic Bankruptcy System Phone Numbers by District:

- Eastern District of California (916) 498-5583/(800) 736-0158
- Central District of California, Santa Ana (714) 836-2278
- Central District of California, San Bernardino (909) 383-5552
- Central District of California, San Fernando Val. (818) 587-2936
- Central District of California, Santa Barbara (805) 899-7755
- Central District of California, Los Angeles (213) 894-4111
- Northern District of California (415) 705-3160/3161
- Southern District of California (619) 557-6521

When you will not complete enough audit development before the bar date, you may need to issue provisional assessments in order to meet it.

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# 20111 Automatic Stay

When a taxpayer files a bankruptcy petition, it imposes an automatic stay. It is effective *immediately* upon filing. The automatic stay prohibits creditors or potential creditors from making demands upon the petitioner.

The bankruptcy provisions have been revised. The Bankruptcy Reform Act of 1994 (H.R. 5116) is effective for taxpayers whose bankrupt petitions were filed with the Bankruptcy Court on or after October 22, 1994. This law revised the automatic stay provisions of the Bankruptcy Code as it relates to tax assessments. However, we still cannot demand information under the automatic stay provisions.

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#### 20112 Petition Date Before 10/22/94

When the bankruptcy petition is filed *before* 10/22/94, the automatic stay prohibits us from taking a number of actions, including:

- Demand letters:
- Levies;
- Bills:
- Notices of Action, Notices of Revision, or Notices of Determination
- Liens:
- Jeopardy (without permission from the taxpayer); and
- Finalization of Notices of Proposed Assessment.

With the taxpayer's permission, you may continue the following:

- Audit letters;
- Telephone calls; and
- Audit information requests.

You may issue a Notice of Proposed Assessment while the taxpayer is in automatic stay, but *you must flag the Assessment with the bankruptcy code* (it will read *Bankruptcy* on TI) immediately to ensure the Notice will not go final. Contact the Bankruptcy Team to alert them that an audit is in progress, so that they can file a claim before the bar date. Send a copy of the Notice to Mail Stop G-1 Bankruptcy.

When taxpayers tell us that they have filed a bankruptcy petition you may ask them the chapter under which they have filed. You may also request copies of the bankruptcy documents. See GTAM 20120, *The Bankruptcy Unit*, for some definitions of the various types of bankruptcy.

**NOTE**: Courts have awarded attorney's fees when IRS agents persisted in pursuing audit information after being informed of the bankruptcy petition and after the taxpayer asked to stop information development. See *William Sheldrick*, et ux, United States Bankruptcy Court for the Northern District of New York, 87-01123.

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#### 20113 Petition Date On or After 10/22/94

When the bankruptcy petition is filed on or after 10/22/94, the automatic stay prohibits us from taking a number of actions.

With the taxpayer's permission, you may continue the following:

- Audit letters
- Telephone calls
- Audit information requests

With or without the taxpayer's permission, you may issue the following, (H.R. 5116):

- Notices of Action, Notices of Revisions, or Notices of Determination
- Standard Bills

You may issue a Notice of Proposed Assessment while the taxpayer is in automatic stay, and the Notice will also go final after the 60 day protest period has passed. Before releasing the Notice, send a copy to the Bankruptcy Unit at Mail Stop G-11: Bankruptcy.

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# 20120 The Bankruptcy Unit

The Bankruptcy Unit is in the Special Programs Bureau. They coordinate all bankruptcy actions. The Bankruptcy Unit files claims with the Bankruptcy Court, advises other units on bankruptcy procedures, provides training, and coordinates activities among our employees, the Attorney General's Office, and taxpayers on bankruptcy matters.

The Bankruptcy Unit collects amounts owing from taxpayers that have filed for bankruptcy protection. They are an important source of information and support when you audit a taxpayer seeking bankruptcy protection. To contact the Bankruptcy Unit, call \* \* \* \* \* \* . The Audit/Bankruptcy Liaison should call first. If the Audit/Bankruptcy Liaison is not available, your Lead Auditor may contact the Bankruptcy Unit.

Bankruptcy Unit actions vary depending on the type of bankruptcy that the taxpayer files.

- Chapter 7 Taxpayer liquidates most assets and liabilities. About 85% of the time, taxes are collectible after the bankruptcy is discharged.
- Chapter 11 Business reorganization. Taxpayer makes payment plan to pay off debt over 6 years. These accounts are followed up by collections for adherence to the bankruptcy plan. Taxes are collectible after the bankruptcy is discharged.
- Chapter 13 Taxpayer is generally a wage earner with a regular income.
   A payment plan is set up and monitored by a trustee. Taxes are collectible after the bankruptcy is discharged.

Most of the other types of bankruptcy chapters are seldom used. They are:

- Chapter 9 For Municipalities. No application for income tax purposes.
- Chapter 12 Adjustment of debts of a family farmer. There are very few of this type.
- Chapter 20 Not a true bankruptcy chapter, but a combination of Chapters 7 and 13. It stops interest accrual as of the petition date. Taxpayer first files Chapter 7 to get rid of unsecured creditors, then files Chapter 13 to pay taxes and secured debts.

**NOTE:** ((\* \* \*)) = Indicates confidential and/or proprietary information that has been deleted.

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# 20121 Identifying Taxpayers Seeking Bankruptcy Protection

In some cases, a taxpayer or representative will tell you about a bankruptcy petition. In addition, you may know facts about a taxpayer's financial condition that suggest the taxpayer is considering bankruptcy protection. If either situation arises, see GTAM 20140, *Audit Bankruptcy Procedures*, for how to proceed.

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### 20122 Petition Date and Other Information

By knowing the Bankruptcy Petition number, you can get much information. For example:

CASE NUMBER 1-90-12345-11

1 = court number 90 = year filed 12345 = petition number 11 = chapter number

#### OTHER BANKRUPTCY DEFINITIONS

<u>Dismissal of Bankruptcy</u> - Bankruptcy petition was denied.

<u>Bar Date or B. D.</u> - Final date for filing a claim against the bankrupt estate. For collection purposes, this is the new statute of limitation date to file a claim.

Mailing Matrix - List of creditors supplied by petitioner.

<u>Automatic Stay</u> - Restraining order prohibiting those activities listed in GTAM 20111 (see GTAM 20111, *Automatic Stay*). This includes finalizing assessments if the petition date is before 10/22/94.

If a case has been discharged, dismissed, or closed, you may take any action. Other than Chapter 13, the FTB liability *will not* be discharged by the court if:

- 1. The taxpayer did not filed returns.
- 2. The due date of the returns is fewer than three years before the petition date.
- 3. A late return is filed fewer than two years before the petition date.
- 4. A Notice of Proposed Assessment goes final fewer than 240 days before the petition date.
- 5. A Notice of Proposed Assessment is in protest or is not final.
- 6. Fraudulent returns are filed.
- 7. A Notice of Proposed Assessment is not issued.

If a taxpayer states that taxes were discharged under a bankruptcy, have the Audit/Bankruptcy Liaison call the Bankruptcy Unit for direction. You may want to call the automatic bankruptcy system. This system has information pertaining to the case, including the bar date and bankruptcy chapter. Before calling, have the

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taxpayer's social security number readily available. Automatic Bankruptcy System Phone Numbers by District are:

- Eastern District of California (916) 498-5583
- Central District of California, Santa Ana (714) 836-2278
- Central District of California, San Bernardino (909) 383-5552
- Central District of California, San Fernando Val. (818) 587-2936
- Central District of California, Santa Barbara (805) 899-7755
- Central District of California, Los Angeles (213) 894-4111
- Northern District of California (415) 705-3160/3161
- Southern District of California (619) 557-6521

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## 20130 Additional Information and Training

For further information or directions, contact the Bankruptcy Unit. In addition, a four-hour Bankruptcy Training Class is available upon request. The class covers the basics of bankruptcy, including the Automatic Stay, Bankruptcy Chapters, special income tax filing requirements, and the consequences of bankruptcy discharge. To schedule a class, have your Supervisor contact the Training Academy.

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# 20140 Audit Bankruptcy Procedures

If you receive a case that may be in bankruptcy, check the Taxpayer Information System. You may see a *bankruptcy* indication in the "Taxpayer Status Field" or the "Protest Field." If there is not an indicator in the Taxpayer Status Field or the Protest Field, route the case to the Bankruptcy Unit (see GTAM 20120, *The Bankruptcy Unit*) or the Protest Control Desk, and flag the case with the proper code. Once the flag has been set, note if the petition date is before 10/22/94 (see GTAM 20141, *Procedures when the Petition Date is Before 10/22/94*). If the petition date is on or after 10/22/94, see GTAM 20142, *Procedures when the Petition Date is on or after 10/22/94*.

For cases that have not been assessed, contact the Bankruptcy Liaison (see GTAM 20120, *The Bankruptcy Unit*) to see if the bar date is still open. If the bar date is closed, it may be better not to issue a Notice of Proposed Assessment. However, if the bar date is open, the Bankruptcy Liaison can inform you how much time is left to issue a Notice. For more information on the bar date, see GTAM 20110, *Bar Date*.

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## 20141 Procedures when the Petition Date is Before 10/22/94

# <u>Bankruptcy Correspondence, Non-Final and Protested Notices of Proposed</u> <u>Assessment</u>

- You, the notice's creator, or staff examining the case holds the case until the Bankruptcy Flag is removed.
- When the Bankruptcy is pending, you or the notice's creator sends a letter to the taxpayer indicating the following:

## Cases in Protest – to tell the taxpayer

- We received the bankruptcy protest.
- Billing is or is not delayed pending the outcome of bankruptcy.
- Bankruptcy is not an issue that can be protested.
- If you, the taxpayer, have reasons other than bankruptcy to protest the Notice, let us know within the specified follow-up period.

## Non-Final /Non-Protested Cases

- We received the bankruptcy correspondence.
- Billing is or is not delayed pending the outcome of bankruptcy.
- Other taxpayer concerns following normal unit procedures.
- If billing is not delayed pending bankruptcy outcome, you or technician can resolve all issues other than bankruptcy issue by following normal unit procedures.
- If the billing is delayed pending bankruptcy outcome, you or technician can resolve all issues other than the bankruptcy issue by following the normal unit procedures except:
  - You cannot issue Notices of Action, Notices of Revision, or Notices of Determination.
  - You cannot finalize petition dates before 10/22/94, according to Schwartz v. U.S., Court of Appeals (9th Cir.), January 22, 1992. Therefore, you should flag these cases to prevent finalization. To do so, contact the Bankruptcy Unit. They will flag the case pending bankruptcy. Chapter Seven bankruptcies are usually complete within 120 days. Chapter 11 or Chapter 13 may take four or five years to complete.

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 Once all issues other than bankruptcy are resolved, close the case and return it to file using ADF-B procedures (see GTAM 20143, ADF-B Procedures). If you need the file later, you or the technician should request the case file from the ADF-B file in General Tax Audit Support, Technical Support.

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## Bankruptcy Correspondence, Final NPAs

- When correspondence claiming bankruptcy comes after the Notice of Proposed Assessment has gone final, contact the Audit/Bankruptcy Liaison. The Audit/Bankruptcy Liaison will let you know whether to abate the Notice. The GTA Technical Support staff abates the Notice and the audit staff re-issues it if the normal Statute or bar date Statute is not closed.
- If the Bankruptcy Unit gets taxpayer correspondence on a case where the Notice is final and voided by the automatic stay provisions, the Bankruptcy Unit copies the Notice and routes it and the correspondence Notice's maker. If the Notice is based on a Revenue Agent Report, they route the case to the Revenue Agent Report unit/Attn: Bankruptcy Liaison. You or the coordinator have the Technical Support staff abate the Notice. Then you or the technician re-issues the Notice if the normal Statute or bar date Statute is still open.

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## 20142 Procedures When the Petition Date is On or After 10/22/94

The revised bankruptcy code will allow Notices of Proposed Assessment to go final while the taxpayer is in bankruptcy. Therefore, you do not need to put Notices in protest status if the only protest issue is bankruptcy.

## <u>Bankruptcy Correspondence, Non-Final and Protested Notices of Proposed</u> Assessment

- 1. The notice's maker should resolve all issues besides the bankruptcy issue by following normal unit procedures.
- You may issue Notices of Action, Notices of Revision, and Notices of Determination at any time. Route a copy of the Notice of Action or Revision to the Bankruptcy Unit to use when the proceedings are complete.
- Once all issues besides bankruptcy are resolved, close the case and return it to file using ADF-B procedures (see GTAM 20143, ADF-B Procedures).

## Bankruptcy Correspondence, Final Notices of Proposed Assessment

- 1. When you receive correspondence claiming bankruptcy after the Notice of Proposed Assessment has gone final, check the Taxpayer Information system for the proper code and alert the Bankruptcy Unit (see GTAM 20120, The Bankruptcy Unit). The Bankruptcy Unit will properly code the system to prevent additional billings to Standard Billings from going to the taxpayer until the bankruptcy issue is resolved.
- 2. If the Bankruptcy Unit receives taxpayer correspondence on a case where the Notice is final and voided by the automatic stay provisions, the bankruptcy team copies the Notice and routes it and the correspondence to the notice's maker. If the Notice is based on a Revenue Agent Report, they will route the case to the Revenue Agent Report unit (Attn: IRS Coordinator). You or the coordinator reviews the correspondence and determines if an adjustment, based upon the technical issue, is necessary. If so, have the Technical Support staff abate the Notice and have a new Notice issued if the normal Statute or bar date Statute is still open.
- 3. Things to remember:
  - If a taxpayer has a bankruptcy petition date on or after 10/22/94, all
    assessments issued after the bankruptcy petition date may go final,
    and are subject to the new bankruptcy laws regarding the automatic

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stay. See GTAM 20113, Petition Date On or After 10/22/94.

- b. If a taxpayer has a bankruptcy petition date before 10/22/94, all assessments issued after the bankruptcy petition date may *not* go final and are subject to the old bankruptcy laws regarding the automatic stay, even if the assessment taxable year ends after 10/22/94. See GTAM 20112, *Petition Date Before 10/22/94*.
- c. We could lose the bankruptcy if we put a bankruptcy case in PF status without assessing tax until the Tax Court decides, or the case is out of bankruptcy. This applies to both pre- and post-petition date cases. If this is the case, issue a protective Notice and contact the Special Procedures Unit at \* \* \* \* \* \* \*.

**NOTE:** ((\* \* \*)) = Indicates confidential and/or proprietary information that has been deleted.

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## 20143 ADF-B Procedures

The ADF-B File keeps returns on closed cases where the taxpayer filed for bankruptcy protection. Older year returns, usually requested by the Revenue Agent Report Unit, are available if we get more information from the taxpayer, the IRS, or the Bankruptcy Unit.

Once a case is identified on the Taxpayer Information System as a bankruptcy and all the technical issues are resolved, route the case to the Protest Control Desk. On the route slip, indicate the return should be filed in the ADF-B File. If a Collection File exists, place comments there, indicating which returns were sent to the ADF-File. You may want to place a comment on the Taxpayer Information file as well.

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# 20150 Prompt Audit Requests

In accordance with Bankruptcy Code Section 505(b), a trustee of a bankruptcy estate can avoid personal liability by requesting a prompt audit of the corporate returns filed under the trustee's administration of the bankruptcy estate. We have 60 days from the date we get the trustee's letter to notify the trustee that we are starting an audit on specified tax years. After 60 days, the Statute of Limitations expires to audit returns for specified tax years filed during bankruptcy proceedings. If we perform a timely examination, we have 180 days from the date we get the request to complete the audit and notify the trustee of any tax due. Otherwise, we lose the Statute of Limitations for assessing tax after 180 days.

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### 20160 Statute of Limitations

For audit purposes, the Statute of Limitations for assessing tax on a Personal Income Tax taxpayer is the earliest of:

- The Statute of Limitations under the Revenue and Taxation Code (see GTAM 10000, Statute of Limitations);
- The bar date under the Bankruptcy Code (see GTAM 20122, *Petition Date and Other Information*); or
- The time limits under the prompt audit request provisions of the Bankruptcy Code (see GTAM 20150, *Prompt Audit Requests*).

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# 20170 Enterprise-Wide Bankruptcy System

The Enterprise-Wide database includes bankruptcy case information from courts throughout California and other states (when we are notified or have a matching account). It includes information on:

- Individuals
- Corporations
- Partnerships
- Municipalities

Using the System helps prevent violations of bankruptcy laws, maximize claims issuance, and promote compliance. To determine your level of access to the System, contact your supervisor, or have your supervisor contact the Accounts Receivable Collection System Help Desk.

The three Central Office computers with the System are located at:

- Unit 389
- Unit 348
- Unit 343

There is an instruction package next to each computer, and posted Help Desk phone numbers.

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# 20180 Bankruptcy - Case Review

When reviewing a Bankruptcy case, verify that the taxpayer's account is coded as a bankruptcy account before releasing the notices. Also verify that:

- The notice will not be issued after the BAR DATE,
- No violations were made during the AUTOMATIC STAY, and
- The taxpayer's Taxpayer Information and Business Entities account is properly coded.

If the file is properly coded, the TI and BETS Systems determine if the case goes final, and what bills to issue. The two systems are programmed to identify the petition date. The petition date determines if we can finalize a notice and if we can issue a bill. The Bankruptcy Unit sets and removes all bankruptcy codes.

Know when the taxpayer is in bankruptcy in order to avoid violating the automatic stay! Make sure that you issue all Notices of Proposed Assessment *before the bar date*. If you cannot determine the bar date from the file or from the account, call the Bankruptcy Court.

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## 20181 Review for PIT Bankruptcy



- Check the Taxpayer Information system for comments related to the bankruptcy. Look for notification made to the Bankruptcy Unit of the pending Notice of Proposed Assessment. This may indicate the type of bankruptcy, what the collection unit has done, who the trustee is, a phone number, and the bankruptcy file number. It may even tell you who has worked this case in the past and if the bankruptcy has been discharged or dismissed.
- Check the Taxpayer Information system for the bankruptcy flag. If the taxpayer is flagged for bankruptcy, the flag is located in the upper right corner of the screen under Taxpayer Status and in the middle of the top line of all later screens.
- Check the Enterprise-Wide Bankruptcy System for information on the petition date and claim date. The petition date lets us know what procedures the audit staff follows. The claim date is the date the Bankruptcy Unit filed the claim. We can amend the claim only while the estate is open.
- If the case is officially in bankruptcy and the Taxpayer Information system does not have the flag, notify the Bankruptcy Unit immediately.
- If the assessment is due to a prompt audit, verify the prompt audit statute of limitations. For an explanation of a "Prompt Audit," see GTAM 20150, Prompt Audit Requests.
- If the taxpayer previously had a bankruptcy flag, and now the flag is gone, you may issue a notice. Check the Collection File for possible comments.
- Update the Event Log to record all review actions taken.

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## 20200 C CORPORATION PROGRAM

GTAM 20210	Tax Clearance - Certificate of
GTAM 20220	Post Dissolution
GTAM 20221	Reduced Minimum Franchise Tax Provisions
GTAM 20230	Transferee Liability - Corporation
GTAM 20240	Deductible Dividends

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### 20210 Tax Clearance - Certificate of

California Revenue & Taxation Code section 23334 provides, in effect, that the terms of existence of any domestic corporation are reduced or terminated. No foreign corporation may withdraw from the State without first getting a Tax Clearance Certificate from us.

The taxpayer must request, in writing, a Tax Clearance Certificate. A corporate officer, attorney, or accountant may sign this request. Taxpayers should send requests to:

Franchise Tax Board Tax Clearance, MS F-225 P.O. Box 1468 Sacramento, CA 95812-1468

The envelope should be clearly marked. "Rush: Tax Clearance."

Within 30 days of receiving a certificate request, we will either:

- Issue the certificate, or
- Notify the person requesting the certificate of the amount of tax that must be paid; or the amount of bond, deposit, or other security that must be furnished in order to get the certificate.

Before we can issue a Tax Clearance Certificate, a taxpayer must have filed all returns due and paid all liability of record, or have paid all liability that has accrued even though not yet due, including Notices of Proposed Assessment outstanding or in process.

When a taxpayer wants a tax clearance before the completion of an audit and the issuance of Notices of Proposed Assessment, forward the file to the Tax Clearance Section, Mailstop F-225.

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### 20220 Post Dissolution

A corporation dissolves or withdraws through the Office of the Secretary of State. After dissolution or withdrawal, the Post-Dissolution Unit audits the corporation's tax returns to determine if:

- Reorganization has occurred under CR&TC section 23251, and
- All necessary returns are filed.

The post-dissolution audit determines the correct tax liability for each year and verifies that all income is properly reported. You may refer returns to the field audit staff when you need more information that is difficult to get by letter or telephone. Post-dissolution cases are a priority.

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## **20221 Reduced Minimum Franchise Tax Provisions**

The prepayment to the Secretary of State is a payment toward the tax for the first taxable year. Because there is no preceding taxable year, the tax liability is the minimum franchise tax. For taxable years beginning on or after January 1,1997 and before January 1, 1999, the amount payable by a Qualified New Corporation to the Secretary of State is \$600. For taxable years beginning on or after January 1, 1999, the amount payable by a Qualified New Corporation to the Secretary of State is \$300.

If a taxpayer pays the reduced minimum tax to the Secretary of State but later determines that it was *not qualified* for the reduced amount, it owes an additional amount with the tax return for the first taxable year. The first year tax return determines the tax for the second taxable year.

Example: For years beginning on or after January 1, 1997, and before January 1, 1999, the beginning corporation has to pay \$200 (\$600 + \$200). For years beginning on or after January 1, 1999, the beginning corporation has to pay \$500 (\$300+ \$500).

If a corporation paid \$800 to the Secretary of State but was a Qualified New Corporation, the overpayment is reflected on the return for the first taxable year.

Example: For years beginning on or after January 1, 1997, and before
January 1, 1999, the beginning corporation's overpayment is \$200 (\$800 \$600). For years beginning on or after January 1, 1999, the beginning
corporation's overpayment is \$500 (\$800-\$300).

A Qualified New Corporation must have gross receipts of one million dollars or less and tax liability no more than \$800 on the return for the first taxable year. The first taxable year's return determines the tax for the second taxable year.

For taxable years beginning on or after January 1, 1999, if the first taxable year is not the final taxable year, then the prepayment Secretary of State tax is:

- \$300 if it is a Qualified New Corporations; or
- \$800 if it is not a Qualified New Corporation.

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If the corporation thought it was going to qualify but did not, then it prepaid \$300 to the Secretary of State and paid \$500 more with the return for the first taxable year.

For taxable years beginning on or after January 1, 1997 and before January 1, 1999, if the first taxable year is not the final taxable year, then the prepayment for the Secretary of State tax is:

- \$600 if it is a Qualified New Corporation; or
- \$800 if it is not a Qualified New Corporation.

If the corporation thought it was going to qualify but did not, then it prepaid \$600 to the Secretary of State, and paid \$200 more with the return for the first taxable year.

The tax is a measured tax for the first taxable year only if the corporation dissolves during its first taxable year.

If the first taxable year is also the final taxable year, then the tax liability is the measured tax, but not less than:

- The reduced minimum tax if it is a Qualified New Corporation (\$600 for years beginning on or after January 1, 1997 and before January 1, 1999, and \$300 for years beginning on or after January 1, 1999); or
- \$800 if it is not a Qualified New Corporation.

For taxable year beginning on or after January 1, 1999, for the second taxable year, the tax liability is the measured tax, but not less than:

- Reduced minimum tax (\$500) if it is a Qualified New Corporation; or
- \$800 if it is not a Qualified New Corporation.

For taxable year beginning on or after January 1, 1997 and before January 1, 1999, for the second taxable year, the tax liability is the measured tax, but not less than:

Regular Minimum Tax (\$800) whether or not a Qualified New Corporation.

The franchise tax is imposed under CR&TC Section 23151, and the amount of tax is measured by income, unless the minimum franchise tax defined in CR&TC

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section 23153 is greater. Thus, a measured tax that is greater than the minimum tax always supersedes the minimum tax.

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# 20230 Transferee Liability - Corporation

If a corporation may be insolvent, whether or not it has dissolved, consider any transferee liability. Try to gather and include information in the audit file to determine if a transferee liability exists, including:

- The transfer of assets to a transferee, and whether this transfer left the corporation insolvent.
- Whether the transferor corporation is liable for any proposed assessments.
- Whether when the transfer was made a liability accrued, though it wasn't assessed.

If a transferee liability exists, we issue all assessments jointly to the transferor and transferees. Each transferee is liable for the whole assessment. An individual or a corporation may be a transferee.

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### 20240 Deductible Dividends

Before 1990, dividends received from corporations subject to the Franchise Tax or Corporation Income Tax were deductible to the extent paid from earnings previously taxed under the Bank and Corporation Tax Law. The provision aims to avoid double taxation of corporation income.

For taxable years beginning on or after January 1, 1990, CR&TC section 24402 was revised to allow a deduction for the following portion of dividends paid from previously taxed earnings:

- One Hundred percent (100%) if from a more than fifty percent (50%) owned corporation.
- Eighty percent (80%) if from a corporation owned at least twenty percent (20%), but not more than fifty percent (50%).
- Seventy percent (70%) if from a corporation owned less than twenty percent (20%).

Compare the deductible percentages the taxpayer uses to those in the Deductible Dividends Report (<a href="http://www.ftb.ca.gov/msa/ddise.asp">http://www.ftb.ca.gov/msa/ddise.asp</a>). If information for a particular dividend payor is not in the report, call the Deductible Dividend Desk in Sacramento at (916) 845-4138 for the deductible percentage.

**NOTE**: The deductible percentages in the report represent 100% of the portion of the dividends paid from previously taxed income. For taxable years beginning on or after January 1, 1990, make an additional adjustment of 70% or 80% if the payor corporation is not more than 50% owned. For example, if the taxpayer receives a dividend of \$100,000 in 1991 from a corporation, and the taxpayer's ownership percentage in the corporation is five percent (5%), calculate the deductible dividend as follows:

Total dividend received	\$100,000
X Deductible percentage from book	3.500%
Portion of dividend declared from previously taxed income:	3,500
X 70% adjustment	<u>70%</u>
Deduction allowed under §24402	<u>\$2,450</u>

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## **20300 ESTATES AND TRUSTS**

GTAM 20310.1	Audit Referrals
GTAM 20310.2	Estate Income Tax Certificates
GTAM 20310.3	Short Statute Requests
GTAM 20310.4	Request for Copies of Estates and Trusts Returns - Disclosure
GTAM 20310.5	Assessment of Penalties on Decedent's Individual Returns

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### 20310.1 Audit Referrals

The Estates and Trust unit provides technical support for the following flow-through items distributed from an estate or trust that are reported on an individual Form 540 return:

- 1. Credits
- 2. Net Operating Losses
- 3. Capital Losses
- 4. Administrative Expenses
- 5. Bankruptcy Estate Tax Attributes
- Deductions for:
  - a. Income In Respect Of A Decedent
  - b. Federal Estate Tax
  - c. California Estate Tax (Pick-Up Tax)

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#### 20310.2 Estate Income Tax Certificates

#### Overview

For certain estates, the California Superior Court, Probate Division cannot allow the estate to close unless we certify to the Court for *both* the decedent and the decedent's estate that:

- All taxes that are due are paid, and
- All taxes that *may become due* are secured by payment of a deposit.

CR&TC section 19513 requires the fiduciary to get a certificate from the Department if:

- The total value of the assets of an estate exceeds \$400,000, and
- Assets having a total value of \$100,000 or more can be distributed to one or more nonresident beneficiaries.

## Purpose Of Certification

The certification requirement prevents assets under the control of the Probate Court of California from being distributed out of state without our authorization.

The certificate notifies the Superior Court, not the fiduciary. The certificate allows the court to accept the "final account" of the fiduciary by indicating that, as of the date that we issue the certificate, we are not aware of any unpaid tax, and that any identified potential liability has been secured. Therefore, the tax certificate (1) does not relieve the estate of liability for any taxes due or which may become due for the decedent or the estate, and (2) the certificate does not relieve the fiduciary of the personal liability for taxes and other expenses as imposed by CR&TC section 19516.

#### Request For Certification

Fiduciaries routinely request a certificate when they request a final hearing date from the probate court. The court hearing is usually scheduled within a few weeks of the fiduciary's petition to close the estate.

CR&TC section 19514 mandates that we have 30 days from the date of the request either to:

1. Issue the certificate, or

The information provided in the Franchise Tax Board's internal procedure manuals does not reflect changes in law, regulations, notices, decisions, or administrative procedures that may have been adopted since the manual was last updated

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2. Notify the requester of the amount of payment or deposit required to get the certificate.

The Request For Estate Income Tax Certificate - Form FTB 3571 must be completed by the fiduciary or the fiduciary's representative and mailed to us. They can get the form from the California Package X Tax Forms Catalogue or by writing to:

California Franchise Tax Board Tax Certificate Unit, P.O. Box 1468 Sacramento, CA 95812-1468.

Also, they can request the form by calling (916) 845-4210. They cannot get certification from any of our district offices.

# **Conditions Required For Certification**

When they get a request, the Estates and Trusts Unit examines the decedent's individual and estate Taxpayer Information Systems accounts and income tax returns. If applicable, the fiduciary must provide:

- Payment of any tax that is currently due,
- Deposits to secure payment of non-billable (protested or non-final) liabilities,
- Deposits to secure potential assessments resulting from issues identified upon examination of the individual and individual returns previously filed, and/or
- A return for all taxable years that have ended even if the return is not yet due, or a cash deposit to secure filing of the return.

# Request for Payment Not Yet Due

The last requirement exists because a tax liability accrues at the close of the accounting period during which it was incurred, even though the payment is not due until the due date of the return. We cannot certify to the Probate Court that all taxes have been paid or secured without examining the return.

<u>Determination of Deposit Required To Secure Returns Not Yet Due</u>

If the fiduciary is unable to file the return before a scheduled court date, the fiduciary may elect to pay a security deposit to receive certification. The fundamental audit criterion suggests a security deposit of one and one-half the amount of the last full year's tax liability or \$1,000, whichever is greater.

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However, we may modify this amount to reflect negation of non-recurring income reported on the prior year return. We do not consider gains generated from the sale of the estate's primary assets or lump sum retirement fund distributions when determining the amount of security deposit.

Fiduciaries must provide certification even if they have an extension to file a return. However, we will include estimated tax payments/and or remittance made with an *Automatic Extension for Fiduciaries* - Form FTB 3563, as part of a cash deposit requested.

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# 20310.3 Short Statute Requests

CR&TC section 19517 provides that a fiduciary or other person liable for the tax may request, in writing, to shorten the period for mailing notices proposing to assess tax, to 18 months on all income received or accrued during the decedent's lifetime or by his estate or trust during the administration period.

To be valid, the request must:

- Be transmitted separately from any other document,
- Indicate clearly that it is a request for prompt assessment under the provisions of CR&TC section 19517,
- Indicate the kind of income tax, the name and the account number shown on the previously filed California income tax return, and
- Specify the taxable periods for which the prompt assessment is requested.

We do not have a form comparable to the IRS Form 4810. However, we will accept the federal form if it is completed to reflect the above requisites.

#### NOTE:

- A request under CR&TC section 19517 does not extend the statute.
- Filing an amended return will negate all prior requests for that taxable year.
- Section 19517 does not limit the assessment period on a "Married Filing Joint" return because of the survivor's joint and several liabilities.

The Estates and Trusts Unit enters a comment on the Taxpayer Information Comment Input Screen indicating that a short statute has been granted. Check the Comments Screen to see if the statute is still open before using audit resources on a case.

### Processing and Recording Requests

The technician processes the requests for a short statute as follows:

- Update address and code the account "DECEASED."
- Verify that the return is filed for years subject to the short statute request.
   Inform the fiduciary if we have no record of a return filed.
- Reverse discharged liabilities.
- Provide a copy of the request to collections if the account is assigned.

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• Input information on the Taxpayer Information Comment Screen indicating the Statute date.

• Acknowledge receipt of the short statute request to the fiduciary.

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# 20310.4 Request for Copies of Estates and Trusts Returns - Disclosure

# Returns

You may furnish copies of the decedent's individual and estate returns to the fiduciary or the attorney for the fiduciary or to the surviving spouse, if the surviving spouse signed the returns. All such requests are routed to the Data Services and Storage Section, RID unit, Mail Stop C-2. We charge taxpayers for copies of the returns if an issue we opened did not cause the request.

### Disclosure - Estates

The Security & Disclosure procedures provide that disclosure of information from the return of an estate is authorized to:

- The administrator, executor or trustee of the estate and to any beneficiary in those years he/she received a distribution from the estate.
- The duly constituted attorney-in-fact of any of the foregoing persons, subject to the conditions of inspection prescribed for such person.

# <u>Disclosure - Trusts</u>

The Security & Disclosure procedures provide in part that disclosure of information from the return of a trust is authorized to:

- The trustee or trustees, jointly or severally.
- Any person who was a beneficiary of the trust during any part of the period covered by the return, upon submission of satisfactory evidence that the person was such a beneficiary.

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# 20310.5 Assessment of Penalties on Decedent's Individual Returns

Penalties applicable to a living individual's personal income tax return are applicable to the individual returns of a deceased taxpayer.

# **Delinquent Penalty**

Returns due, but not filed by the decedent before date of death.

Unless due to reasonable cause, the <u>delinquent penalty</u> imposed by CR&TC section 19131 is assessed in accordance with the length of the delinquency at the time of death.

Example: Assume the taxpayer (1) died June 20, 19X3, without filing 19X1 and 19X2 calendar year returns, and (2) the fiduciary or the decedent's estate filed the returns subsequent to date of death. The length of the delinquency would be computed from the due date of the returns to the date of death.

Returns for the year in which taxpayer died.

Returns for the year of death must be filed by the fiduciary of the taxpayer's estate. The return is due three months and 15 days after the close of the taxable year, the taxable year being the normal 12-month period beginning with the first day of the decedent's taxable year.

The fiduciary, if one is appointed, or beneficiary must file the return. The surviving spouse may file a joint return if (1) no fiduciary is appointed, or (2) if the appointed fiduciary does not file a "Single" return for the decedent, and if (3) the surviving spouse did not remarry during the taxable year. Unless there is reasonable cause, the penalty for failure to file a timely return is assessed.

# Other Penalties

All other remedial and compensatory penalties applicable to a living individual's return may be assessed in connection with adjustments to a decedent's return.

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# **20400 CREDITS**

GTAM 20410	California Economic Development Areas Manual
GTAM 20420	Manufacturers' Investment Credit
GTAM 20430	Research & Development (R&D) Credit

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# 20410 California Economic Development Areas Manual

See the California Economic Development Areas Manual.

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# 20420 Manufacturers' Investment Credit

The Manufacturers' Investment Credit is addressed in CR&TC section 17053.49 & CR&TC section 23649. More information on the Credit is available on the FTB website at

http://www.ftb.ca.gov/geninfo/credits/mic/references/index.html

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# 20430 Research & Development (R&D) Credit

**NOTE:** ((\* \* \*)) = Indicates confidential and/or proprietary information that has been deleted.

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## **20500 PENALTIES**

GTAM 20505	Supervisor Approval of Penalties
GTAM 20510	Failure to File a Return/Delinquent Penalty
GTAM 20520	Failure to Provide Information Penalty
GTAM 20530	Accuracy Related Penalty
GTAM 20531	Accuracy Related Penalty - Defenses
GTAM 20532	Accuracy Related Penalty – Checklist
GTAM 20540	Fraud Penalty

The California Revenue & Taxation Code provides for the assessment of penalties when taxpayers have not complied with the law. Some penalties are for:

- Failure to file returns/delinquent filing,
- Failure to furnish information,
- Accuracy related,
- Fraud, etc.

There are also provisions to waive penalties under certain circumstances.

Familiarize yourself with the penalty sections of the law and apply them uniformly. When you assess a penalty, you must create a separate issue folder for the penalty. In addition, all notices that assess a penalty must include an explanation.

**NOTE:** ((\* \* \*)) = Indicates confidential and/or proprietary information that has been deleted.

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# **20505 Supervisor Approval of Penalties**

SB 94 requires supervisor approval before you can impose an accuracy related penalty or failure to furnish penalty on all notices issued *after* December 31, 2001.

To comply with the law, the supervisor must review all cases where either penalty is assessed, and provide documentation of that review in the case file.

This provision does *not* apply in the following circumstances:

- Any penalty calculated through electronic means, including Automated Audits
- Any penalty as a result of an Revenue Agent Report

In the absence of the immediate supervisor, another supervisor of equal or higher authority may also approve the penalty.

#### PROCEDURE:

Your supervisor must review all cases where an Accuracy Penalty or the Failure to Furnish penalty is imposed, except Automated Audit workloads and Revenue Agent Reports.

The supervisor reviewing the case must:

Make an entry in the PASS Event log approving the case.

or

Sign the Audit Report (FTB 6430) or the Narrative Report

Because of the language of the law, a "lead" or another auditor who is acting in a review capacity will not meet this requirement.

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# 20510 Failure to File a Return/Delinquent Penalty

CR&TC section 19131 states that if any taxpayer fails to file a return by its due date (including extensions), we add a penalty of 5% of the tax for each month or partial month elapsing thereafter. We determine the due date of the return without regard to any extension of time for filing. The maximum penalty is not more than 25% of the tax. If the failure to file a return is due to fraud, see CR&TC section 19131(d).

If the taxpayer is an individual or fiduciary, and fails to file a return within 60 days without regard to extensions, the penalty is no less than the smaller of:

- One-hundred dollars (\$100), or
- One hundred percent (100%) of the tax required on the return.

We may waive this penalty if the taxpayer can show the failure to file was due to reasonable cause and not willful neglect. Reasonable cause requires the taxpayer to exercise ordinary business care and prudence. If a taxpayer has exercised such ordinary care and prudence and is nevertheless unable to file the return within the prescribed time, then the delay is due to reasonable cause. Forgetting to file or assuming someone else will file is not reasonable cause.

To request a waiver from the Failure to File a Return/Delinquent Penalty, the taxpayer must submit a written statement listing facts that support reasonable cause. Generally, you may accept information submitted for reasonable cause in letter format. If you have doubts or need evidence of mailing, you should request an affidavit setting forth the reasons for late filing.

Effective for Notices of Proposed Assessment issued after January 1, 2001, a first time nonfiler will receive a "Request to File" letter. If there is no response after 30 days, we issue a Notice that includes tax and late filing penalties. A repeat nonfiler will receive a "Demand to File" letter. If there is no response after 30 days, we issue a Notice that includes tax, demand penalty, late filing penalty, and a filing enforcement fee. This applies to Personal Income Tax nonfilers only.

**NOTE**: A repeat nonfiler is defined as anyone who in the past four years was assessed a nonfiler Notice of Proposed Assessment.

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# 20520 Failure to Provide Information Penalty

When a taxpayer/representative fails, or refuses, to furnish information that you have requested in writing, you should send a formal demand for information. This is appropriate when a response to a request for information is unreasonably delayed, incomplete, or when the request is refused or ignored.

CR&TC section 19133 states that if any taxpayer fails or refuses to furnish any information requested in writing, through a formal legal demand, we may add a penalty of 25 percent of the additional tax.

Before making a formal demand, examine the relevance of the request. Ask yourself:

- Is the request reasonable?
- Have I allowed a reasonable amount of time to gather the requested information?
- Has the information already been provided, but in some alternative format?
- Are other alternatives available?
- Is the failure to provide the requested information due to reasonable cause?

If a demand is necessary, it must refer to:

- The prior requests (initial request, & follow-up to initial request),
- The specific information requested, and
- The need for the specific information. You must also refer to the Failure to Provide Information Penalty under CR&TC section 19133.

You should assess the Failure to Provide Information Penalty when the taxpayer refuses or ignores the formal demand. Apply the penalty uniformly where:

- You have clearly requested the information in writing with an explanation of the need for, and relevance of the information, and
- You have served a formal demand.

We do not accept audit recommendations based upon a lack of taxpayer cooperation, or refusal to furnish information, if you have not documented the

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requests for information in writing. Documentation includes an appropriate initial request, a follow-up to initial request, a re-request, and a formal demand for the information. The demand *must* include a reference to CR&TC section 19133, and state the dollar impact.

Assess penalties unless there is reasonable cause for the failure to provide information. Reasonable cause requires the taxpayer to exercise ordinary business care and prudence. If a taxpayer has exercised such ordinary care and prudence and is nevertheless unable to provide the information, then the failure is due to reasonable cause. Use judgment when determining the applicability of the Failure to Provide Information Penalty, and, if necessary, seek guidance on the matter.

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# 20530 Accuracy Related Penalty

It is our practice to consider the imposition of any penalty in each case where the penalty is applicable. If the accuracy-related penalty is proposed, include a detailed analysis of the taxpayer's failure to meet each of the three defenses in the audit workpapers. Also, discuss each defense with the taxpayer and/or the tax representative.

We may impose the Accuracy-Related Penalty on the portion of any underpayment of tax that should be shown on the return (CR&TC section 19164). The penalty is equal to 20% of the portion of the underpayment caused by one or more of the following:

- Negligence or disregard of rules or regulations;
- Substantial understatement of income tax:
- Substantial valuation misstatement;
- Substantial overstatement of pension liabilities; or
- Substantial estate or gift tax valuation understatement.

**NOTE:** See CR&TC section 19164.1 for exceptions and special rules for amounts attributable to the Teacher Retention Tax Credit and CA Regulation 19164 for multistate taxpayers.

The statute provides relief provisions or exceptions for each of these situations. We will consider the relief provisions for each situation prior to assessing the penalty. A taxpayer may raise three common defenses (relief provisions) to avoid assessment of the penalty. The defenses are:

- Substantial Authority Substantial Authority exists for the tax treatment of an item on the return [Internal Revenue Code (IRC) section 6662(d)(2)(B)];
- Adequate Disclosure Adequate Disclosure of the transaction has been made on the original return [IRC Section 6662(d)(2)(B)]; and
- Reasonable Cause The taxpayer, in regards to the underpayment, has showed Reasonable Cause and good faith [IRC Section 6664(c)(1)].

Meeting any one of these three defenses will preclude the assessment of the accuracy-related penalty.

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**NOTE:** The accuracy-related penalty will not apply to any portion of an underpayment on which a fraud penalty applies under IRC section 6663.

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# 20531 Accuracy Related Penalty - Defenses

GTAM 20531.1	Accuracy-Related Penalty - Defense of Substantial Authority
GTAM 20531.2	Accuracy-Related Penalty - Defense of Adequate Disclosure
GTAM 20531.3	Accuracy-Related Penalty - Defense of Reasonable Cause

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# 20531.1 Defense of Substantial Authority

The defense of Substantial Authority addresses the technical merits of the taxpayer's position. The penalty will not apply if the taxpayer has Substantial Authority for the treatment of the item, regardless of whether the taxpayer meets the defenses of Reasonable Cause or Adequate Disclosure.

In determining whether the taxpayer meets this defense, consider the following:

- Substantial Authority is determined at the time the return is filed or on the last day of the taxable year to which the return relates, not at the time the audit is conducted;
- The "Substantial Authority" standard is less stringent than the "more likely than not" (greater than 50%) standard but is more stringent than the "reasonable basis" standard [Treasury Regulation 1.6662-4(d)(2)].

Example #1 - A return position that is arguable, but fairly unlikely to prevail in court satisfies the reasonable basis standard but not the Substantial Authority standard.

Substantial Authority may exist for more than one position with respect to the same item. Substantial Authority may exist for both the taxpayer's and for FTB's positions, even though the approaches are contrary to each other [Treasury Regulation 1.6662-4(d)(3)(i)].

Example #2 - Based on a Third Circuit Court of Appeals case, a taxpayer's deduction for toxic waste cleanup is not allowable. However, the taxpayer relied on a Fifth Circuit Court of Appeals case from the same year to support the deduction. The facts in these two Circuit Court cases and the taxpayer's case are comparable. For federal purposes, the taxpayer's avenue of appeal is through the Ninth Circuit Court. A basis for Substantial Authority exists for the taxpayer's position.

Example # 2a - The same facts as above, except the Third Circuit Court case is now a Ninth Circuit Court of Appeals case. No basis for Substantial Authority exists for the taxpayer's position.

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# 20531.2 Defense of Adequate Disclosure

The easiest way for a taxpayer to avoid an accuracy-related penalty, based on a substantial understatement of tax, is to adequately disclose all the relevant facts affecting an item's tax treatment on the tax return. If the item is adequately disclosed, then the penalty will not apply, regardless of whether the taxpayer meets the defenses of Reasonable Cause or Substantial Authority.

**NOTE:** Adequate Disclosure includes the element of reasonable basis [IRC section 6662(d)(2)(B)]. Do not confuse reasonable basis with Reasonable Cause, the third defense against the accuracy-related penalty [IRC section 6664(c)(1)].

# **How To Properly Disclose Information About An Item**

Disclosure of an item is adequate if it is made on a properly completed statement attached to the original California return or a qualified amended return.

- The taxpayer files Internal Revenue Service (IRS) Regulation Disclosure Statement; Form 8275-R, when taking a position contrary to a regulation.
- The taxpayer files IRS Disclosure Statement Form 8275, for items or positions other than those that are contrary to a regulation.

**NOTE:** Properly completed forms and attachments are required for certain items (such as charitable contributions, employee business expenses, and interest expense). The required forms and attachments are updated annually by the IRS through Revenue Procedures. The Revenue Procedures apply for California purposes in the absence of specific state procedures.

The following rules apply when making a disclosure to avoid the accuracy-related penalty due to a substantial understatement of tax:

- Disclosure regarding recurring items must be made each year;
- Disclosure with respect to a carryover item is only necessary for the taxable year in which the carryover arises. Disclosure is not required during the year that the carryover is utilized; and
- Disclosure of how income is apportioned or allocated to California (for example, the identification of the combined group and treatment of intercompany transactions) can be made by attaching a statement to the return.

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# **Using a Qualified Amended Return to Disclose Information**

If a taxpayer does not adequately disclose an item or position on their original return, they may still qualify for the exception to the accuracy-related penalty if the disclosure is made on a qualified California amended return. A California qualified amended return is generally defined as an amended return filed after the due date of the return and before the time the taxpayer is first contacted by the Franchise Tax Board concerning an examination of the return. A California qualified amended return:

- Must be filed on a California Amended Return Form (Form 100X for corporations and Form 540X for individuals); and
- Must include a completed IRS Form 8275 or 8275-R disclosing the relevant facts or position taken by the taxpayer.

Statements to disclose relevant facts regarding the apportionment or allocation of income to California are acceptable.

**NOTE:** To ensure proper handling, the taxpayer should write "SUBSTANTIAL UNDER-STATEMENT DISCLOSURE" on the top of the first page of the amended return.

If a qualified amended return with Adequate Disclosure is not made prior to the time the Franchise Tax Board contacts the taxpayer regarding an examination, the automatic waiver is not available and the taxpayer must show Reasonable Cause or Substantial Authority to avoid the penalty.

Special rules, for filing qualified amended returns, apply to taxpayers who are subject to the IRS Coordinated Examination Program. See FTB Notice 92-9 (Substantial Understatement Penalty Guidelines).

# **Adequate Disclosure Will Not Solve All Problems**

Properly disclosing an item will generally insulate a taxpayer from the penalty based on:

- Substantial understatement of tax; or
- Negligence / disregard of the rules and regulations.

However, even if the taxpayer discloses an item, there is no automatic waiver of the penalty in the following circumstances:

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 If the position taken on the return is frivolous. Frivolous is defined as "patently improper". A reasonable basis must exist for the taxpayer's tax treatment to avoid the penalty;

- If the penalty is based on negligence or disregard of the rules and regulations, the Adequate Disclosure defense is not available. In order to have a reasonable basis for the position, the taxpayer cannot be negligent or disregard the rules and regulations;
- If the taxpayer fails to keep adequate records or fails to properly substantiate the item;
- If the item is attributable to a tax shelter; or
- If the penalty is due to negligence or disregard of the rules and regulations, the taxpayer may not rely upon the Revenue Procedures to define what constitutes Adequate Disclosure.

**NOTE:** "Adequate Disclosure" is defined differently for the accuracy-related penalty than for purposes of the 6-year statute of limitations provided for in CR&TC section 19058.

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## 20531.3 Defense of Reasonable Cause

The defense of Reasonable Cause addresses the taxpayer's reasons for the tax treatment of an item. The penalty will not apply if the taxpayer has Reasonable Cause and has acted in good faith in determining the treatment of an item, regardless of whether the taxpayer meets the defenses of Substantial Authority or Adequate Disclosure.

**NOTE:** Adequate Disclosure includes the element of reasonable basis [IRC Section 6662(d)(2)(B)]. Do not confuse reasonable basis with Reasonable Cause, the third defense against the accuracy-related penalty [IRC Section 6664(c)(1)].

The determination of whether a taxpayer acted with Reasonable Cause and in good faith is made on a case-by-case basis. Generally, the most important factor is the extent of the taxpayer's effort to assess the proper tax liability. Circumstances that may indicate Reasonable Cause and good faith include an honest misunderstanding of fact or law that is reasonable in light of all the facts and circumstances, including the experience, knowledge and education of the taxpayer.

Examples of how this defense applies are found in Treasury Regulation section 1.6664-4.

#### a. Reasonable Cause - Reliance on a Representative

The most common defense under Reasonable Cause is "Reliance on a Representative" (outside tax advisor/return preparer). When reviewing the defense of Reasonable Cause - Reliance on a Representative, it is not necessary to show Substantial Authority for, or Adequate Disclosure of, the position taken. Reasonable Cause is a stand-alone defense. The taxpayer need only show that their reliance on the representative was reasonable based on their knowledge, and that they acted in good faith.

**NOTE:** A taxpayer that does not hire an outside representative to interpret an issue of substantive law, but instead relies on an internal tax department to determine the tax position taken on the return can still raise the defense of Reasonable Cause. In this situation, the taxpayer's defense is "Reasonable Cause " rather than "Reasonable Cause - Reliance on a Representative". The primary defense raised when the taxpayer relies on an internal tax department is

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often Substantial Authority and/or Adequate Disclosure. Reasonable Cause could still be a defense. The requirements and procedures further discussed are also relevant in the situation where you are reviewing the defense of Reasonable Cause where the taxpayer has not relied on the advice of a representative, but has instead relied on the advice of an internal tax department. Burruss Land and Lumber Company vs. US, 72-2 USTC 16,056.

Apply the following interpretive statements on current and future audit cases:

**Position Statement:** Taxpayers relying on a representative with a relevant tax background to address substantive tax issues may raise a defense of Reasonable Cause. Reasonable Cause is interpreted to mean the exercise of ordinary business care and prudence. *United States v. Boyle*, 469 US 241 (1985). Reasonable Cause - Reliance on a Representative is not an automatic defense and substantiation of the defense is required. Automatic exceptions that preclude raising the defense of Reasonable Cause include the following:

- The taxpayer withholds critical information from the representative which is relevant to the correct determination of the issue;
- The representative, that the taxpayer relied on, was not qualified in the area of tax law;
- · A blatant error occurs that the taxpayer should have found; or
- The taxpayer has sufficient knowledge to determine that a position taken on the tax return is incorrect, and thus, it was not reasonable for the taxpayer to rely on the advice.

The fact that a representative took a questionable position does not automatically preclude the defense of Reasonable Cause. The key question is whether the taxpayer, given their knowledge, had reason to question the advice. If so, that raises doubt as to whether they could reasonably rely on the advice. This theory is widely upheld by federal tax case decisions dealing with the accuracy related penalty where a key factor in upholding or withdrawing the penalty rested on the sophistication of the taxpayer regarding tax matters, and whether or not this level of sophistication would have caused the taxpayer to realize a mistake had been made upon review of the return. *Vorsheck v. CIR*, 933 F2d 757 (9th Cir., 1991); *Viani v. Commissioner*, 68 TCM 776 (1994); *Mauerman v. CIR* 22 F3d 1001 (10th Cir., 1994); and *Caughlin v. Commissioner*, 67 TCM 2429 (1994)

With the increasing complexity of the tax law, many taxpayers are hiring representatives to advise them on certain tax matters, or to prepare their return. No requirement exists that taxpayers must obtain a detailed understanding of the

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tax laws as they relate to substantive issues. Nor does a requirement exist which would require the taxpayer to research a position taken by the representative. This theory is upheld in the Supreme Court decision of *United States v. Boyle*, 469 US 241. The Supreme Court specifically states that requiring the taxpayer to challenge the substantive advice of a competent accountant or attorney, or seeking a "second opinion", or monitoring the representative on the tax law would nullify the very purpose of seeking the advice of a presumed expert in the first place. The court held that seeking professional help is the act of a "reasonable person" exercising "ordinary business care and prudence". Based on judicial and regulatory authority, an important factor relevant to the determination of Reasonable Cause is the extent of the taxpayer's efforts to assess the proper tax liability. Hiring a representative to address a substantive issue of tax law is viewed as a reasonable effort to determine the proper tax liability if the taxpayer does not have knowledge to determine the proper tax liability. When the taxpayer selects a competent tax advisor and supplies the advisor with all relevant information, it is consistent with ordinary business care and prudence to rely upon the advisor's professional judgment in determining the taxpayer's tax obligations.

Penalties are applied to encourage voluntary compliance, not to punish conduct that is reasonable. Consider all facts and circumstances of the taxpayer, as well as past compliance history.

In order to qualify for the Reasonable Cause - Reliance on a Representative defense, the taxpayer must demonstrate the following:

- The taxpayer provided necessary and accurate information;
- The tax advisor or return preparer had sufficient expertise to justify reliance; and
- The taxpayer actually relied in good faith on the tax advisor or return preparer's judgment.

Below is a listing of general procedures to follow and questions to ask when determining the applicability of the accuracy-related penalty based on the defense of Reasonable Cause - Reliance on a Representative. The following list of questions and procedures is not all-inclusive. The facts and circumstances of each case will control the procedures to follow and the questions to ask.

The taxpayer must provide full disclosure of all facts and circumstances to the representative. The representative's opinion must be based on all pertinent facts and circumstances of the situation. Failure of the taxpayer to disclose a fact

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or circumstance that is known and relevant, or that should be known, to determine the proper tax treatment of the item precludes the defense of Reasonable Cause - Reliance on a Representative. The submission by the taxpayer of internally prepared financial statements or summaries with supporting documentation may not necessarily be full disclosure.

Methods of determining whether or not full disclosure occurred are based on the facts and circumstances of each case. Because the auditor did not see the transfer of information does not establish a prima facie case that the information was not provided. Review the following to determine the information and documentation provided to, and requested by, the representative:

- Document requests from the representative to the taxpayer;
- References to documents obtained in the tax representative's file or referenced in the opinion letter; and
- Affidavits from the taxpayer and the representative signed under penalty of perjury identifying what information was given and received.

For tax returns due on or after September 2, 1995 (determined without regard to extensions), regulatory authority provides that the advice:

- Must take into account the taxpayer's purpose for entering into a transaction and for structuring the transaction in a particular manner (Treasury Regulation section 1.6664-4(C), as amended by TD 8617, August 31, 1995); and
- Must not be based on unreasonable factual or legal assumptions and must not unreasonably rely on the representations, statements, findings, or agreements of the taxpayer or any other person (Treasury Regulation section 1.6664, as amended by TD 8617, August 31, 1995). In essence, a representative should verify both the tax aspects and the significant nontax business aspects of a transaction to meet this regulatory provision.

Non-tax aspects of a transaction may or may not be material to the determination of the correct tax treatment. For all cases, the facts and circumstances will determine whether or not the auditor advances the argument that knowledge of the non-tax aspects of a transaction were material and critical to the determination of the correct opinion and that the representative, and/or taxpayer, had insufficient knowledge of these non-tax aspects.

If the non-tax aspects are material and relevant, the auditor should perform a review of the representative's reliance on the information provided by the

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taxpayer. Verify that the representative did not base his recommendation on any assumptions. Did the representative ask for additional information or clarification from the taxpayer or any other person? For example, verifying a non-tax aspect might include a situation where the taxpayer provides the representative with an appraisal showing the valuation of an asset contributed to charity (a non-tax aspect of the transaction). The representative should verify the qualifications of the appraiser if the representative is not a qualified appraiser himself.

Advisor must be competent in the area of income taxation law. The advisor must be competent in the area of income tax law. Competency in a specific area of income tax law, such as S corporation law if the issue deals with an S corporation, is desirable but not required.

Taxpayers are not required to utilize a California representative. An out of state representative implies to the client that he will obtain competency in the subject matter at issue if he is not already competent, upon accepting the engagement. Enrolled Agents, Certified Public Accountants, and lawyers are held to this professional standard of conduct.

The advisor must be independent of the consequences of the transaction on which advice is provided. For example, judicial authority has addressed cases where the tax advisor is advising a client to invest in a certain corporation's stock. In addition to acting in the capacity as a tax adviser, the representative is vice president and majority shareholder of the corporation. Advice given on the investment, for purposes of making the investment and the tax consequences thereon, was not considered independent so that the taxpayer could rely on them, as the advisor benefited from the transaction if the taxpayer invested.

Mauerman v.CIR 22 F3d 1001 (10th Cir., 1994); Fisher v. Commissioner, 64 TCM 1670 (1992)

Review the records to verify the independence of the advisor. You should ensure the advisor did not realize an economic benefit from the transaction that could impair his independence (for example, misrepresenting the financial condition of a corporation to sell shares of stock when the advisor receives a percentage of the sales proceeds from the stock.)

The representative must give advice to taxpayers on which they rely.

Generally, the defense of Reasonable Cause - Reliance on a Representative will cover advice related to a matter of law, but could extend to issues dealing with matters of computation, procedures, remedial law, or administrative law.

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Advice does not have to be in written format, but it must include any communication that sets forth the analysis or conclusion recommended by the professional tax advisor, and provided to the taxpayer. In the case of a large corporate taxpayer, communications are generally in writing. A written analysis is probably available for significant issues/transactions.

A representative's preparation of a return based solely on internally prepared financial statements provided by a taxpayer (in the absence of supporting documentation) generally does not constitute the giving of advice. Discussions or calculations regarding either the treatment of an item on the return or a discussion as to whether or not a return is due must occur.

The taxpayer must reasonably rely on the advice given. Verify that the advice given by the representative was used to determine the tax liability reported. Determine the level of tax knowledge of the taxpayer. Determine if based on this knowledge, reliance on the position taken by the representative is reasonable. Some items to consider when determining the taxpayer's knowledge:

- Education level of the taxpayer and field of experience. Example: A doctor, though well educated may not have relevant knowledge of tax law;
- Experience in business and investment transactions. Some cases hold that a taxpayer who holds any interest in partnerships and/or corporations, or has portfolio investments, is held to a higher degree of sophistication and knowledge for purposes of determining if reliance is reasonable; other judicial authority has held these factors are irrelevant, *Vorsheck v. CIR*, 933 F2d 757 (9th Cir., 1991); *Heasley v. Commissioner*, 55 TCM 1748 (1988); *Pace v. Commissioner*, 70 TCM 1506 (1995). Consider these factors, as well as experience necessary to perform job duties. However, the education level and tax knowledge of the taxpayer prevails. The taxpayer's knowledge to invest in a profitable venture and to invest in more than one activity does not necessarily indicate knowledge of tax law. Also, the fact that the taxpayer is the CEO of a manufacturing company does not necessarily indicate knowledge of tax law;
- Frequency of the issue. An issue that occurs annually and is reported one
  way, and then suddenly reported differently should cause the taxpayer to
  question the new treatment;
- Extent and sophistication of an internal tax department. If the taxpayer is a corporation, give consideration to whether or not the corporation has an

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internal tax department, and if so, the sophistication of the tax personnel. The knowledge of personnel employed in a corporate tax department is imputed to the corporate taxpayer. Advice received from an internal tax department does not constitute advice from a representative for purposes of determining if Reasonable Cause - Reliance on a Representative has occurred (Treasury Regulation section 1.6664-4(c)(2)). The defense of Reasonable Cause - Reliance on a Representative applies to advice given by someone other than the taxpayer. If the corporation seeks advice from an independent advisor, consideration of the knowledge of the internal tax department, to determine if it was reasonable or not for the taxpayer to rely on the advice based on the taxpayer's knowledge, is appropriate.

**NOTE:** It is presumed the corporation's internal tax department personnel reviews and concurs with all such advice sought from an independent advisor prior to the final presentation of the position on the tax return. Some of the items to consider with corporate taxpayer's are

- Does the corporation have a tax department?
- How large is the tax department and what is the background of its members?
- Are there state and local tax personnel present? If so, are any of them well versed in California franchise/income tax laws?
- What is the background of those who provided the advice on the position taken?
- Was an independent third party analysis sought?
- Did the internal tax department review any independent third party advice? If so, request documentation to support the internal tax personnel's findings.
- Was any other advice given by the representative that contradicts the position taken on the return?
- Verify if the taxpayer was informed of the likelihood the position would prevail if examined. If the taxpayer was told that the position has a 10 percent chance of being sustained, reasonable reliance on the representative's opinion would probably not be found;

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• Determine if the taxpayer is using a new representative due to an unagreed opinion received from a prior representative. If this is the first year the taxpayer has utilized the current representative while taking the contested position, attempt to ascertain whether or not the prior representative advised the taxpayer on the contested issue. If so, did the prior representative issue a different conclusion, which resulted in the switching of representatives? If the prior representative advised the taxpayer that the position was not appropriate, a basis exists which could preclude the taxpayer from raising the defense of Reasonable Cause. The taxpayer should have known it was probably not reasonable to rely on the advice of the second representative. This position is determined based on the facts and circumstances of each case. Review the taxpayer's records to determine if this situation exists. Some items to consider are:

- Accounting fees paid. Check to see if accounting fees were paid to more than one representative.
- Supporting documents. Ascertain why there was more than one representative. Review any supporting documents and correspondence made with each of the representatives. NOTE: Do not contact the prior representative without the written consent of the taxpayer. The attorney/client privilege may be invoked in regards to this information. This is not indicative that the prior representative advised the client in a manner different than the position taken on the return.
- Determine if the representative issued any advice on the non-tax aspects of a transaction. An opinion issued by the representative regarding the non-tax aspects of a transaction, (e.g., a CPA valuing property for purposes of computing a gain or loss) would not allow the taxpayer to raise the defense of Reasonable Cause Reliance on a Representative, if the representative is not qualified in the area of the non-tax aspect item (in this example the CPA must be a qualified appraiser as well as a tax professional).

# The contested position taken on the return, or an error, cannot be blatantly incorrect.

Reasonable Cause requires a taxpayer to demonstrate that his actions are those of an ordinary and prudent businessperson. Determine, based on the knowledge

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of the taxpayer acting as an ordinary and prudent businessperson, if they should have discovered the error.

An ordinary business person is presumed to review his return. If he knows he earned \$100,000 in wages but only \$10,000 in wages is reported, a review of the return would identify this error. Caughlin v. Commissioner, 67 TCM 2429 (1994)

Keep in mind that the Supreme Court has stated, "Whether the elements that constitute 'reasonable cause' are present in a given situation is a question of fact, but what elements must be present to constitute 'reasonable cause' is a question of law."

U.S. v. Boyle, 469 U.S. 241 (1985). Each case must be reviewed to establish its own set of facts and circumstances. If based upon those facts and circumstances, the taxpayer shows that there was Reasonable Cause for the position taken and that the taxpayer acted in good faith with respect to that position, a penalty should not be assessed. This conclusion is in accord with the principle declared by the Supreme Court that the penalties under the revenue laws are designed to impose upon conduct "which is intentional, or knowing, or voluntary, as distinguished from accidental."

*U.S. v. Murdock, 290 U.S. 389*. "It is not the purpose of the law to penalize.... innocent errors made despite the exercise of reasonable care." Spies v. U.S. 317 U.S. 492 (1943)

#### b. Reasonable Cause - Reliance on a K-1

If a taxpayer (investor) has an underpayment attributable to a pass-through item, consider the actions of the Pass-Through Entity (PTE) and the taxpayer/owner when making the determination of whether the taxpayer meets an exception to the accuracy-related penalty under CR&TC section 19164 (incorporating IRC sections 6662, 6663 and 6664).

In general, the auditor must take the following steps before assessing the accuracy-related penalty.

 The auditor must consider the actions of both the PTE and the taxpayer/owner to determine if an exception to the application of the penalty is met.

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 Reasonable Cause: The auditor should generally impute the Reasonable Cause and good faith of the PTE to the taxpayer/owner with the underpayment. However, even if the actions of the PTE satisfy the Reasonable Cause exception, factors may indicate that the taxpayer did not act with Reasonable Cause and good faith. If so, the penalty may still apply to the taxpayer/owner's underpayment.

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Example - If the taxpayer reported items inconsistent with the K-1 without cause, or failed to report K-1 items altogether, the FTB can challenge the Reasonable Cause and good faith imputed from the PTE to the taxpayer.

- Adequate Disclosure: In order for this exception to apply, the auditor should look for the required disclosure (IRS Form 8275 or 8275-R, as appropriate) either on the return of the PTE or the taxpayer/owner.
- Substantial Authority: There are no special rules for applying the Substantial Authority exception for underpayments due to items attributable to PTEs unless the entity is a tax shelter or the item is a tax shelter item. Therefore, the general rules and definitions apply. See the discussion below for special rules for tax shelters.

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• The auditor must independently determine the applicability of the penalty given the facts and legal authority present in the case. If the auditor can determine that the penalty is not applicable based on the facts and circumstances of the case, then it is not necessary to bring the issue to the taxpayer/owner's attention. The penalty will not automatically apply just because the potential penalty amount exceeds the various threshold tests. If the auditor remains unsure whether the penalty would apply, then the auditor must develop all sides of the issue and appropriately weigh conflicting authorities as a basis for the penalty. The auditor may need to discuss the issue with the taxpayer in order to factually develop the issue.

- If the auditor determines the penalty may apply after weighing the facts/legal authority, then the auditor must discuss the potential applicability of the penalty with the taxpayer/representative before completing the examination. The auditor must also explain the exceptions to the penalty that the taxpayer may meet.
- The auditor must give the taxpayers the opportunity to demonstrate they
  meet one of the exceptions before closing the case.
- The audit file must document and support the basis for assessing the penalty.

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# 20532 Accuracy Related Penalty - Checklist

Taxpayer Name:
Identification Number:
Case Unit Number:
Audit Years:

	NO	YES
STATUTORY REASONS FOR ASSESSMENT		
(meeting any one will trigger the penalty)		
Substantial Understatement of tax		
Negligence or disregard for rules or regulations		
Overvaluation penalties		
Fraud		

### **DEFENSES TO APPLICABILITY**

(meeting only one defense is necessary to avoid the penalty\*)

Substantial Authority	•	•	
Adequate Disclosure			
Reasonable Cause			

<sup>\*</sup>If no is checked for all three defenses, the penalty should be proposed for assessment and the penalty must be fully analyzed in workpapers and discussed with the taxpayer.

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# 20540 Fraud Penalty

CR&TC section 19164 provides for the imposition of a fraud penalty. This penalty is determined in accordance with Internal Revenue Code section 6663.

IRC section 6663 provides for the imposition of a fraud penalty if any part of any underpayment of tax is due to fraud. The penalty is equal to 75 percent of the portion of the underpayment that is attributable to fraud.

The courts have defined fraud as the intentional wrongdoing on the part of the taxpayer with the specific intent to avoid a tax known to be owing (*O.C. Akland,* CA-9, 85-2 USTC ¶9593). Negligence or ignorance of the law does not constitute fraud.

We may impose the fraud penalty where the taxpayer:

- 1. Knew the contents of the return when he or she signed it,
- 2. Knew the return to be false, and
- 3. Made the return with the fraudulent intent to evade tax.

You should examine the taxpayer's entire course of conduct to establish intent. The FTB has the burden of proof when applying the fraud penalty.

The FTB must prove fraud by clear and convincing evidence, but we can infer intent from strong circumstantial evidence. Because fraudulent intent is rarely established by direct evidence, the courts have inferred intent from various kinds of circumstantial evidence. These "indications" of fraud include:

- 1. Understatement of income.
- 2. Inadequate records.
- 3. Failure to file tax returns.
- 4. Implausible or inconsistent explanations of behavior.
- 5. Concealing assets.
- 6. Failure to cooperate with tax authorities.

Unlike criminal fraud, civil fraud need not be proved beyond a reasonable doubt.

Ordinarily a taxpayer is not liable for fraud penalties if the taxpayer acts on the advice of counsel. However, the taxpayer must show that complete and accurate

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information was provided to the attorney. A taxpayer cannot escape the penalty by delegating preparation of the return to someone else.

If the penalty is assessed, the audit file must contain a workpaper section discussing the facts upon which the penalty is based. Include the taxpayer's statement as to why they feel that the penalty does not apply (if applicable), and why the penalty should apply.

**NOTE**: For assessments based upon Revenue Agent Reports, if the IRS has assessed the fraud penalty, we will not automatically assess the penalty. This is because the presumption of correctness is not present. The FTB must independently prove fraud in order to assess the penalty.

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# **20600 INTEREST**

GTAM 20610	Interest Assessed
GTAM 20620	Interest Abatement
GTAM 20630	Interest Paid
GTAM 20640	Interest Rates
GTAM 20650	ADINT (Interest Calculation)
GTAM 20660	Additional 2% Interest (CR&TC section 19521(c))
GTAM 20670	Avon Interest Adjustment

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### 20610 Interest Assessed

Taxes are due and payable as of the original due date of the taxpayer's return (without regard to extension). If the tax reported on the taxpayer's return is not paid by the original due date, or if the Franchise Tax Board assesses additional tax, interest must be computed and charged on the balance due, including penalties, if any (CR&TC section 19101). Interest is compounded daily (CR&TC section 19521) and begins accruing from the date payment is due (CR&TC section 19104).

Interest is assessed, collected, and paid in the same manner as the tax. Compute interest from the date payment of tax is due (usually coincides with the original due date of the tax return) until the date the deficiency is paid. If the tax is paid in installments, interest accrues on the unpaid portions of the liability until the entire balance due is paid (CR&TC section 19104(a); also *Appeal of Richard E. and Geraldine Goodman, Cal. St. Bd. of Equal., October 10, 1984*).

Erroneous refund interest is charged from 30 days after the taxpayer is notified of the erroneous refund to the date the money is repaid. If the refund check is returned, no interest accrues (CR&TC section 19104(b)).

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#### 20620 Interest Abatement

The imposition of interest upon a deficiency is mandatory (*Appeal of Amy M. Yamachi, Cal. St. Bd. Of Equal., June 28, 1977*). The requirement that mandatory interest be charged to the date of payment is not overcome by a delay in the determination of a proposed assessment or in the subsequent administrative review process (*Appeal of Patrick J. and Brenda L. Harrington, Cal. St. Bd. of Equal., January 11, 1978*).

Interest is not a penalty imposed on the taxpayer. It is simply compensation for the use of money (*Appeal of Audrey C. Jaegle, Cal. St. Bd. of Equal., June 22, 1976*). However, under CR&TC section 19104, the FTB may abate all or part of the interest if certain conditions are met. California also follows Treasury Regulation 301.6404-2T in administering interest abatement provisions.

In 1997, the passage of AB 713 conformed California to the federal Taxpayers' Bill of Rights 2. Provisions for abating interest are different depending on whether the tax year involved begins on or after January 1, 1998. Specifically, three aspects were added:

- 1. For tax years beginning on or after January 1, 1998, FTB is allowed to abate interest that is attributable to "unreasonable" error or delay in FTB's performance of a ministerial or "managerial" act.
- AB 713 added the terms unreasonable and managerial to California Revenue and Taxation Code section 19104. Refer to FTB Notice 98-5 and Treas. Reg. Section 301.6404-2T for definitions.
- 3. For abatement requests made on or after January 1, 1998, the taxpayer is allowed to appeal to the State Board of Equalization the FTB's determination to deny abatement. The appeal must be within 180 days of the FTB's determination (California Revenue and Taxation Code section 19104(c)(1)(C)(ii)). Under prior law (which applied to requests made before January 1, 1998), FTB determinations were final and not allowed to be heard by the Board of Equalization.

In 2000, the passage of AB 463 (Ch. 99-183) revised CR&TC section 19104 and changed the circumstances under which we may abate interest. In certain cases, the law now requires taxpayers to raise the interest abatement issue at the time of the appeal of the deficiency or be limited thereafter from raising the issue.

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CR&TC section 19104 now provides specified limitations on the time for taxpayers to appeal and specifies the circumstances under which the Franchise Tax Board will deny a request to abate interest. The revisions apply to requests for abatement of interest filed on or after January 1, 2001.

Other significant points of the law change include the following:

- It clarifies that the *interest* on the deficiency, not the deficiency itself, is subject to abatement.
- It allows taxpayers who protest a deficiency to include a request of certain related interest in their protest.
- In circumstances where taxpayers have not included the request for abatement of interest during the original protest but later file an appeal of the proposed deficiency, taxpayers may include a request for the abatement of interest with their appeal of the underlying proposed deficiency.
- It precludes taxpayers from making a separate request at a later time, if taxpayers have protested or appealed the underlying deficiency and have not made a request for abatement of interest during the protest or appeal.
- If a taxpayer does not protest or appeal the Franchise Tax Board's
  adverse action on an underlying proposed deficiency and is only appealing
  an adverse action on a request to abate interest, or is requesting an
  abatement of interest that has accrued between the time the deficiency
  was final and the time the Notice of Tax Due is issued, the taxpayer may
  make a request for the abatement of interest on Form FTB 3701, Request
  for Abatement of Interest.
- If a taxpayer is denied a request for abatement through the Franchise Tax Board issuing a Notice of Action or a Notice of Determination, taxpayer may appeal to the State Board of Equalization within 30 days of the date on the notice (for unpaid interest), or within 90 days (for paid interest).
   NOTE: This differs from the previous time period to file an appeal on the denial of interest abatement, which was 180 days.
- If the Franchise Tax Board does not respond to a taxpayer's request for abatement of certain interest within six months (not including requests made at protest or appeal), the taxpayer may treat the request as if it is denied and file an appeal with the State Board of Equalization within the above referenced timeframes.

As stated in FTB Notice 98-5, the FTB has developed Form FTB 3701, Request for Abatement of Interest, for taxpayers to use to request waiver of interest for periods attributable in whole or in part to error or delay by one of our officers or

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employees in performing a ministerial or managerial act. They can download the form from our Internet website or request it by telephone at (800) 852-5711. They should mail the completed Form 3701 to:

Franchise Tax Board Taxpayer Advocate Bureau, Mailstop B-20 Interest Abatement Coordinator P.O. Box 157 Rancho Cordova, CA 95741-0157

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### 20630 Interest Paid

Interest is paid on overpayments resulting from an audit. It is compounded daily and computed from the date of overpayment to the date paid, taking into account a 30-day grace period for processing (California Revenue & Taxation Code section 19340). In other words, interest will be paid for the computed period except for 30 days to allow for processing.

In the case of a refund from an originally filed return, interest will accrue if the refund is not paid within 90 days of the filed date.

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## 20640 Interest Rates

The rate of interest is provided by statute and is adjusted periodically by the Legislature. We cannot impose interest at any other rate than the "adjusted annual rate." Interest, at the rate specified by law, is compounded and accrues on the balance due until the date the liability is completely paid. This means that interest accrues not only on the tax and applicable penalties, but also on the interest balance due (CR&TC section 19521; Internal Revenue Code section 6621).

We compute the interest rate semi-annually. Interest accruing after June 30, 1983 is compounded daily on:

- Unpaid tax,
- Interest, and
- Certain penalties.

We compute interest on tax from the original return due date to the date the tax is paid. We compute the interest on delinquent, underpayment, and accuracy-related penalties from the return due date, including extensions. We compute all other penalties from the notification date (the transaction date on the video) to the date paid.

If the taxpayer pays the entire assessment within 15 days of the original notification, we charge no interest.

Note: Suspension of interest may apply to some PIT taxpayers. For details, see GTAM 9510.

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# 20650 ADINT (Interest Calculation)

You can use the ADINT program to compute interest automatically on a debit or credit balance. You can also compute the estimate penalty using ADINT.

If you use the ADINT program to give estimates of interest due, you must notify the taxpayer that it is an *estimate only*.

## **Interest Computations for Corporations**

Request an interest computation from Audit Business Support when:

- An Avon Interest Adjustment is necessary (see GTAM 20670, Avon Interest Adjustment), OR
- You need an exact figure.

The fastest way to get a corporate interest computation is to forward an interest calculation request form. Access the form at:

http://ftbnet/businessentities/RequestForms/InterestComputationRequest/BES%2 0AS%20INTEREST%20COMPUTATION%20REQUEST%20FORM.doc

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# 20660 Additional 2% Interest (CR&TC section 19521(c))

An additional 2% interest rate is applicable for taxable years beginning January 1, 1992, and only for C corporations owing us balances. It will be due on any unpaid amount for that taxable year if the cumulative unpaid tax exceeds \$100,000. Once the corporation meets the cumulative threshold amount of \$100,000 in unpaid tax, all underpayments for that year are subject to the additional 2% interest from the later of January 1, 1992, or the earliest applicable date occurring for that year.

The "threshold amount" includes regular tax, Notices of Proposed Assessment and alternative minimum tax, but not penalties and interest.

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# 20670 Avon Interest Adjustment

California and federal laws are essentially the same in the area of interest assessment. Therefore, the state follows the federal interpretation for the application of the Avon decision (*Avon Products, Inc. v. United States, 588 F. 342*).

The Avon decision is based on the "use of money" principle. This principle states that for any period during which the government has use of the taxpayer's money, interest on a subsequent assessment should not be charged if during the same period the government had use of an overpayment.

When a taxpayer's original return reflects an overpayment that was credited to another year or refunded without interest, and there is a subsequent assessment, interest is charged only when the tax (to the extent of the overpayment) is considered due and unpaid. The tax is transferred to another year or refunded to the taxpayer (refer to Revenue Ruling 88-98).

The Avon decision applies to timely and delinquent filed returns. It does not apply to overpayments transferred as the next year's first estimated tax payment.

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**NOTE:** ((\* \* \*)) = Indicates confidential and/or proprietary information that has been deleted.

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#### 20700 FEDERAL AUDITS

To determine if a federal audit is in progress, you should contact the Federal and State Special Audit Section. If during the course of an examination, you determine that federal activity is occurring, or has occurred, you should observe the following procedures:

# Revenue Agent Reports (from IRS) on Years under Examination

Federal Audit in Progress - If there are no state issues for audit, forward
the case to the RAR Unit in Central Office (see the mailstops listed below).
Secure a copy of the IRS request for information, and a federal waiver if
applicable. Otherwise, continue the examination of the state only audit
issues.

# • Federal Audit Complete

- 1. If you receive a federal "No-Change" letter and there are no state issues, attach the letter to the back of the return to which it applies and treat as a survey case. Otherwise, continue the examination of the state only audit issues.
- 2. If federal adjustments are made and there are no state issues, get a copy of the RAR and forward it to the RAR Unit in Central Office (see the mailstops listed below).
- 3. If you are going to work the RAR with the state adjustments, you must notify the RAR Unit at the time you receive the RAR. This is especially important when you may not complete the audit for the state issues for some time. By coordinating with the RAR Unit, the case can be put on the RAR PIT or Corporation Local Area Network with comments. When the RAR comes in through normal channels, the RAR Unit will not issue a Notice of Proposed Assessment inadvertently. If the RAR Unit receives an RAR and finds that the case is assigned to an auditor, the staff in the RAR Unit will contact you before taking any action. **NOTE**: If federal adjustments are based upon the lack of substantiation, give the taxpayer an opportunity to submit substantiation before closing the examination.
- **Federal Audit Protest** If an RAR is being protested or appealed, get a copy of the RAR and forward it to the RAR Unit in Central Office (see the

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mailstops listed below). **NOTE**: If the state does not conform to the federal statute, or has a different statute, you may make a state adjustment without regard to the federal decision.

 If federal adjustments are made and there are no state issues, get a copy of the RAR and forward it to the RAR Unit in Central Office (see the mailstops listed below).

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2. If you are going to work the RAR with the state adjustments, you must notify the RAR Unit at the time you receive the RAR. This is especially important when you may not complete the audit for the state issues for some time. By coordinating with the RAR Unit, you can put the case on the RAR PIT or Corporation Local Area Network with comments. When the RAR comes in through normal channels, the RAR Unit will not issue an NPA inadvertently. If the RAR Unit receives an RAR and finds that the case is assigned to you, the staff in the RAR Unit will contact you before taking any action. NOTE: If federal adjustments are based upon the lack of substantiation, you should give the taxpayer an opportunity to submit substantiation before closing the examination.

#### RAR on Years not under Examination

- Federal Audit in Progress Forward the federal information to the RAR
  Unit in Central Office (see the mailstops listed below). Secure a copy of
  the IRS request for information, and a federal waiver if applicable.
- Federal Audit Complete Get a copy of the RAR and forward it to the RAR Unit in Central Office (see the mailstops listed below).
- **Federal Audit Protest** Get a copy of the RAR and forward it to the RAR Unit in Central Office (see the mailstops listed below).

Upon receipt of an RAR, you should write across the top of the RAR in red, "Voluntary" the date received, and your initials. Forward the RAR to:

PIT

RAR Unit - Pending Federal Voluntary Team

Mailstop: D-740

Pending Federal (PF). The GTA RAR Unit keeps a file for audit cases where a protest or written correspondence is received by taxpayers in response to a Notice of Proposed Assessment indicating the case is still open with the IRS

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because of ongoing litigation. The RAR unit will withhold finalizing a protested NPA or withhold collection activity until the IRS makes a final determination.

#### CORP

RAR - ADF Unit

General Corporation Revenue Agent Reports

Mailstop: D-741

Audit Determination File (ADF) The GTA RAR Unit keeps a file for audit cases where Taxpayers inform us that the IRS is conducting an audit at the same time we began our state audit. Files held without payments are called ADF files. When the taxpayer anticipates owing additional tax and has made a pre-payment, we call the cases NPay cases. We hold these payments in suspense and hold all cases until IRS makes a final determination.

Check "RAR Pend - FSSAS" on the Audit Report - Form FTB 6430 when routing. For additional routing instructions, see GTAM 13700, Routing the Physical & Electronic Files.

**NOTE**: When any written notification is received within six months of a final federal determination dated before January 1, 2000, the statute of limitations for voluntary Revenue Agent Reports is two years from the date of notification. For final federal determinations dated on or after January 1, 2000, the notification must be "sufficiently detailed" to allow computation of the resulting California change before the statute of limitations starts. Once the required documentation has been received, within the six-month period for reporting, the statute of limitations is two years. Under both old and new law if notification is received after the expiration of the six-month period for reporting, the statute of limitations is four years from the date of notification.

It is important that these cases receive special handling due to the shorter statute.

If the RAR Unit receives an RAR and finds that the case is assigned to you, they contact you before taking any action.

If you have any questions, please contact the RAR Unit [PIT cases \* \* \* \* \* \* \* and corporation cases \* \* \* \* \* \* \*]. You must issue any assessment based on the federal change within the appropriate time frames (see GTAM 10000, *Statute of Limitations*, for additional information).

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#### FTB AND IRS AUDIT IN PROGRESS - PRE NPA

If upon completing your audit, you learn an IRS audit is in progress, complete your audit. Inform the taxpayer of the statute of limitations for notifying us of the final federal determination. See GTAM 10000.

If during your audit, a federal audit is in progress, being appealed, [Cases protested to the IRS Appeals Office. Treas. Reg. 601.103(c)(1)] or petitioned [Cases petitioned to the U.S. Tax Court. Treas. Reg. 601.103(c)(2)] for the same tax year:

- 1. Obtain a copy of the IRS information that substantiates the federal status and a federal waiver, if applicable.
- Contact the Federal and State Special Audit Section [This section's RAR
  unit is responsible for handling the Revenue Agent Reports for the
  General Tax Audit Program Bureau.] Revenue Agent Report Unit to
  determine the status of the federal activity and update PASS with
  comments.
- 3. Check all available resources before requesting reasonable and relevant information from the taxpayer or requesting the IRS audit file.
- 4. Verify the statute of limitations. See GTAM 10000.

To determine whether to follow the federal determination see CR&TC section 20702.

#### FTB AND FEDERAL AUDIT COMPLETED - POST NPA

GTAM 20703 Same Issues GTAM 20704 Different Issues

GTAM 20705 Both Same and Different Issues

If a taxpayer protests our Notice of Proposed Assessment based on a Revenue Agent Report because the federal determination is not final, do the following:

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1. Obtain a copy of the IRS information that substantiates the federal status and a federal waiver, if applicable.

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- 2. Notify the taxpayer that we will transfer the case to the Pending Federal Unit and they will contact the taxpayer.
- 3. Complete the Audit Report, FTB Form 6430.
- 4. Transfer PASS case to:
  - a. PIT 348 PIT RAR PF/ADF Group Worklist.
  - b. Corp 389 Corp RAR New Arrivals
- 5. Route the case to:
  - a. PIT RAR Unit: 348 attn: Pending Federal MS D-745
  - b. Corp. RAR Unit: 348 attn: Pending Federal MS D-737.

If a taxpayer protests our Notice of Proposed Assessment based on a Revenue Agent Report because we previously audited the tax year and issued a nochange letter, claim allowed/denied letter, or Notice of Proposed Assessment:

- 1. Contact the taxpayer to get the details of the issues in writing and
- 2. Give taxpayers an opportunity to provide more information.

To determine whether to follow the federal determination, see GTAM 20706.

**NOTE:** ((\* \* \*)) = Indicates confidential and/or proprietary information that has been deleted.

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## 20702 PRE NPA GUIDELINES FOR WHEN TO FOLLOW FEDERAL

IF	AND	THEN
FTB AND IRS AUDIT ARE IN PROGRESS	ISSUES ARE:	
	SAME	See GTAM 20703
	DIFFERENT	Follow FTB GTAM 20704
	SAME & DIFFERENT	Follow IRS on same issues and complete state audit of different issues GTAM 20705

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#### 20703 Same Issues

If we are auditing the same issues as the IRS or the taxpayer requests that we suspend the examination until the federal audit is complete:

- 1. Notify the taxpayer we will route the case to the RAR Unit.
- 2. Inform the taxpayer of the statute of limitations for notifying us after a federal determination
- 3. Inform the taxpayer that the RAR will contact them about the federal audit's progress.
- 4. (CR&TC section 18622) and the statute of limitations when a federal audit is involved (CR&TC section 19059 and 19060).
- 5. Transfer PASS case to:
  - a. PIT 348 PIT RAR PF/ADF Group Worklist.
  - b. Corp 389 Corp RAR New Arrivals
- 6. Route the case(s) to:
  - a. PIT RAR Unit: 348 attn: Audit Determination File MS D-745
  - b. Corp. RAR Unit: 348 attn: Audit Determination File MS D-737.

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#### 20704 Different Issues

If we are auditing different issues from the IRS, continue the audit of the different issues.

When the audit is complete, transfer PASS case to:

• PIT - 348 PIT RAR PF/ADF Group Worklist.

# Corp - 348 Corp RAR New Arrivals

Note the situation in the audit file and forward the Revenue Agent Report, a copy of the tax return, and federal information to:

- PIT RAR Unit: 348 MS D-745 Central Office
- Corp. RAR Unit: 348 MS D -737 Central Office.

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#### 20705 Both Same and Different Issues

If we are auditing both same and different issues from the IRS:

- 1. Tell the taxpayer you will continue to audit issues that differ from the federal issues.
- 2. Tell the taxpayer we will conform to the federal determination for issues that are the same for both state and federal purposes when we receive notification that the federal audit is final
- 3. Explain to the taxpayer the statute of limitations for notifying us after a federal determination (CR&TC section 18622) and the statute of limitations when a federal audit is involved (CR&TC section 19059 and 19060).
- 4. Tell the Revenue Agent Report Unit about the Federal audit.
- 5. When you have completed the audit involving the different issues, issue the appropriate notices.
- Transfer PASS case to:
  - a. PIT 348 PIT RAR PF/ADF Group Worklist.
  - b. Corp 348 Corp RAR New Arrivals
- 7. Route the cases to:
  - a. PIT RAR Unit: 348 attn: Audit Determination File MS D-745
  - b. Corp. RAR Unit: 348 attn: Audit Determination File MS D-737.

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#### 20706 POST NPA GUIDELINES FOR WHEN TO FOLLOW FEDERAL

GTAM 20707 Same Issues
GTAM 20708 Different Issues
GTAM 20709 Both Same and Different Issues
GTAM 20710 Case Status Procedures
GTAM 20711 Federal Amended Returns
GTAM 20720 Senate Finance Committee (SFC) Internal Revenue Service
Special Task Force (ISTF) Review

IF	AND	THEN
FTB AND IRS AUDIT ARE COMPLETED	ISSUES ARE:	
	SAME	Depends on facts and circumstances See GTAM 20707
	DIFFERENT	Follow IRS (unless fed/state differences) See GTAM 20708
	SAME & DIFFERENT	See GTAM 20709

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#### 20707 Same Issues

If the Notice of Proposed Assessment issues are the same as the Revenue Agent Report, determine whether the information the IRS used was new or different from what we used during the audit. Based on the facts and circumstances of the case, choose either the federal determination or our determination. Based on your determination, follow the appropriate case status procedures (see GTAM 20710).

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#### 20708 Different Issues

If the Notice of Proposed Assessment issues are different:

- Ask the taxpayer for more information.
- Consider whether the Notice of Proposed Assessment based on the Revenue Agent Report is correct as issued.
- When you have completed the audit, follow the appropriate case status procedures (see GTAM 20710).

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## 20709 Both Same and Different Issues

If the Notice of Proposed Assessment includes issues that are both the same and different from the federal determination, follow the guidelines under CR&TC section 20707 (same issues) and CR&TC section 20708 (different issues).

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#### 20710 Case Status Procedures

GTAM 16100 Correspondence received GTAM 16210 Untimely protest GTAM 16220 Paid protest GTAM 16240 Protest GTAM 16300 Claim for refund

Upon completing one of the above actions, attach the Revenue Agent Report to the file and include a note to Audit Business Support to forward the complete file when all transactions have been completed to:

PIT RAR Unit: 348, MS D-739 Central Office

• Corp. RAR Unit: 348, MS D - 739 Central Office

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### 20711 Federal Amended Returns

If you receive a federal amended return before completing your audit, observe the following procedures:

If a federal examination of the amended return is pending or incomplete, contact the Federal/State Examination Unit to verify the examination. If the amended issues are the same as the state audit issues, advise the taxpayer to file amended returns with us. We will process the state amended returns when the taxpayer tells us about the final IRS action on the federal amended returns (see GTAM 16370, *Protective Claims*, for additional information).

If the amended issues are *not* the same as the state audit issues, you should request a copy of the Notice of Refund, RAR, etc., from the Federal/State Examination Unit, once the final action is taken on the federal amended returns. Consider the amended return adjustments at audit, to the extent applicable for California purposes.

- If a federal examination of the amended return is complete, you should seek proof of the examination (Notice of Refund, RAR, etc.), and consider the amended return adjustments at audit, to the extent that they apply to California purposes.
- If there has been no federal examination of the amended return, and there is no sign that a federal examination is pending, address the issues in the same way as any other position a taxpayer might raise at audit. That the IRS issued a refund without examination does not control a state-issue audit. Depending upon the adjustment, you may need to audit the issues raised on the amended returns unless the federal amended return treatment is clearly appropriate for California purposes.

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# 20720 Senate Finance Committee (SFC) Internal Revenue Service Special Task Force (ISTF) Review

During an examination, taxpayers may tell us that the SFC or the ISTF is reviewing their case. The Commissioner of the Internal Revenue Service has established a special task force to resolve cases brought before the SFC. These cases involve taxpayers that have written letters to the SFC with unresolved issues with the IRS in at least one tax year.

The SFC reviews these letters and asks taxpayers to sign a waiver authorizing the committee to forward the cases to the ISTF in Washington D.C. for resolution. The ISTF assigns the cases, through the IRS Advocate's Office, to a Problem Resolution Officer in a District Office or a Service Center near the taxpayer's home.

Once assigned, the IRS will review these cases and actively seek to resolve all potential issues, including issues the taxpayer has not raised. At the end of the examination, the taxpayer receives a notice of tax change or a closing letter.

Cases scheduled for review by the ISTF will *not* show as reopened cases on the Individual Master File transcript. Consequently, statements by a taxpayer that a case is in review by ISTF *cannot* be verified with an IMF transcript.

The IRS has an internal control database that lists the cases under ISTF review. We can get information on specific cases by contacting the IRS. We have made arrangements to fax the *Request for Federal Tax Information* - Form FTB 6227 to the Fresno Service Center. The IRS will fax a response showing:

- 1. If the case has been referred by the SFC, and if so,
- 2. To whom it has been assigned.

**NOTE**: To verify IRS or SFC involvement, contact the Federal/State Examination Unit.

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# 20800 DISASTER ACTION PLAN - COMPLIANCE PROGRAMS AND ADMINISTRATION BRANCH

GTAM 20810	Introduction
GTAM 20820	Roles & Responsibilities
GTAM 20830	Compliance Programs and Administration Branch Guidelines
GTAM 20840	Compliance Programs and Administration Branch Disaster
	Action Team

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#### 20810 Introduction

This disaster plan should make the Compliance Programs and Administration Branch's procedures and activities consistent with our procedures and activities. When a disaster occurs, we defer all Compliance Programs and Administration Branch correspondence and notices two weeks, with the exceptions noted below.

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# 20820 Roles & Responsibilities

The Communication Services Bureau provides our staff with disaster information. They notify the Individual Tax Collection Bureau, division chiefs, and bureau directors. The Systems Management Section of the Individual Tax Collection Bureau identifies each disaster area's ZIP code, and notifies us so that we can employ disaster plans. The Compliance Programs and Administration Branch Disaster Action Team executes disaster plans for its area. It is also notified when ZIP code areas are *removed* from the disaster area list.

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# 20830 Compliance Programs and Administration Branch Guidelines

The Compliance Programs and Administration Branch will defer mailing all audit letters and notices to taxpayers in affected disaster areas for two weeks. Exceptions are:

- Assessments that could be barred by the statute of limitations. You should process and type these assessments manually.
- Taxpayers we have contacted who have requested that we not defer their mail.

These exceptions must have appropriate Bureau Director approval before mailing.

After two weeks, you may contact taxpayers or representatives to determine if we may proceed mailing letters and notices.

In addition, we may continue corresponding with any taxpayer or representative who requests it, whether or not the taxpayer is in an affected disaster area.

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# 20840 Compliance Programs and Administration Branch Disaster Action Team

The Compliance Programs and Administration Branch Disaster Action Team ensures that we employ the procedures for mailing audit letters and notices following a disaster. They also develop and revise the attached procedures.



Process	Procedure	Contact
Notices		
NPAs, NORs	Do not create or send notices to ZIP Code areas on the disaster list	User
Correspondence		
Audit Letters	Do not create or send letters to ZIP Code areas on the disaster list.	User



Process	Procedure	Contact
Correspondence		
Audit Letters	Do not create or send letters to ZIP Code areas on the disaster list.	Auditor
Audits in Progress		
Audits	Suspend audits in ZIP Code areas on the disaster list, until contact with taxpayer or taxpayer representative indicates audits may continue.	Auditor



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Process	Procedure	Contact
Notices		
PAWS (NPAs, NORs)	User gets a ZIP Code flag on PAWS when issuing notices to areas designated as disaster areas. ( <b>NOTE:</b> User can override the flag if necessary. Must attach a note to the batch authorizing release.)	N/A
	Released Notices: Audit Business Support personnel pulls all notices addressed to affected ZIP Code areas, based upon the current disaster list	Audit Business Support Manager
Correspondence		
ADCORR (T/C, HW)	User must check current disaster list before writing letter. There is no ZIP Code flag for ADCORR. User can mail letter with a note attached to the batch authorizing the release of the letter.	User
	Released Letter: Daily edit reviews for ZIP Codes in designated disaster areas. They return all letters pulled to their authors.	Audit Business Support Manager



# FED STATE AND SPECIAL AUDIT SECTION (FSSAS)

Process	Procedure	Contact		
Notices				
PAWS (NPAs,	User gets a ZIP Code flag on PAWS	N/A		
NORs)	when issuing notices to areas designated			
	as disaster areas. User can override the			
	flag if necessary. Must attach a note to			
	the batch authorizing release.			
	Released Notices: Audit Business	Audit		
	Support personnel pulls all notices	Business		
	addressed to affected ZIP Code areas,	Support		
	based upon the current disaster list.	Manager		
Automated Notices	The Program Team coordinates pulling all	FSSAS		
	notices addressed to the affected ZIP	Program		
	Code areas from the Mail Room.	Team		

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		Manager or
		Lead
Correspondence		
ADCORR (T/C, HW)	User must check current disaster list before writing letter. There is no ZIP Code flag for ADCORR. User can mail letter but must attach note to the batch authorizing release of the letter.	User
	Released Letter: Daily edit reviews for ZIP Codes in designated disaster areas. They return all letters pulled to their authors.	Audit Business Support Manager
Automated Letters (HOH, STARS)	The Program Team coordinates pulling letters from the Mail Room.	FSSAS Program Team Manager or Lead
PC (Speed Messages)	The maker or Lead checks ZIP Codes on the disaster listing before mailing any PC generated letters	User or Lead



# **Technical Resource Section**

Process	Procedure	Contact
Notices		
NPAs, NORs	Do not create or send letters to ZIP Code areas on the disaster list.	Reviewer